No. 87-1269 (5)

SUPREME COURT, U.S.
FILED
JUL 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLIAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED JANUARY 27, 1988
PROBABLE JURISDICTION NOTED APRIL 18, 1988

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or call collect (402) 342-2831

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* The appendix to the jurisdictional statement is in two volumes, the first of which is bound with the jurisdictional statement. The two volumes are referenced "J.S. App. I" and "J.S. App. II." The addendum to the motion to affirm or dismiss is referenced as "M.A.D. Add."

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MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVIE E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

No. 84-1851

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* This Joint Appendix sets forth the Docket Entries in the courts below and other parts of the record. Both the docket entries and the other parts of the record are set forth exactly as they appear in the official record of this case below. No attempt has been made to correct typographical or grammatical errors that actually appear therein.

84-1851

Date	Filings-Proceedings
1984	
April 16	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. lw Clerk's Fee $65
April 16	Filed aplt's emergency motion for stay on appeal w/appendix in eight volumes CIVATT (4/16) lw
Apr 18	Filed appellees' memorandum in opposition to aplts' emergency motion for stay with supporting declaration. (CIVATT) 4/18 ogm
Apr 24	Filed Order (WRIGHT, SKOPIL & NORRIS, CJJ) aplt's emerg. mot. for stay on appeal is granted and the judgment is stayed until further order of this court. The appeal is expedited. Oral argument on the merits will be heard at 1:30 p.m. on Tuesday, May 15, 1984 in San Francisco. Any supplemental briefs will be filed with the clerk by Tuesday, May 08, 1984. -ot-
May 8	Filed aplt's Civil Docketing Statement. 5/7 (CONFATT) eal
May 8	Filed aplt's mot. for additional time for oral argument. (5/8) (Panel) tsp
May 8	Filed Orig & 15 aplt's supplemental brief (49 pgs); 5 appendices (5/8) (Panel) tsp
May 8	Filed Orig. & 15 aple's supplemental brief (49 pgs) (5/8) (Panel) tsp
May 10	Filed delcaration of Geoffrey L. Graybill, counsel for aplts, concerning aplts' supplemental memorandum. (Panel) 5/9 eal
May 11	Filed Order (WRIGHT) aplts' motion to have one hour for oral argument is denied. The parties shall have 30 minutes each to argue. ogm

May 15	Argued and Submitted to: WRIGHT, SKOPIL, NORRIS, CJJ. pf
May 23	FILED AS OF 5/18/84 CERTIFICATE OF RECORD. (5/3/84) lw
May 25	Filed Order (WRIGHT, SKOPIL, NORRIS) This appeal was argued and submitted 5/15/84. Among the issues raised, aplts challenged the delcarations of the central committee aples, who asserted they were authorized to bring this action. In support of this challenge, aplts sought discovery of committee bylaws and minutes, which were not provided by aples. The D.C. neglected to rule on this callenge. We remand to that court to make findings of fact and conclusions of law with respect to the authority of aples to bring the action and appeal. lw
June 5	Filed aples' notice of district court order following remand. (6/5) (Panel) tsp
June 18	Filed Order (WRIGHT, SKOPIL and NORRIS, CJJ) The aplts may, if they desire, file supplemental briefs with this court concerning the authority of the aples to bring this action and appeal. If they brief this issue, such briefs shall be filed within 10 days of the date of this order. Aples will then have 10 days to file a responsive brief. All briefs shall be limited to discussion of this issue and no brief shall exceed 10 pgs in length. eal
June 29	Received Orig & 15 Appellants' Supplemental Brief per court order of 6/18, (11 pgs) 6/28 (Oversized; counsel advised to send motion for leave to file oversized brief) PANEL EM
June 29	Filed Aplt's motion for leave to file appendix to Supplemental Brief 6/28 PANEL EM
June 29	Received Orig. & 5 Aplts Appendix to Supplemental Brief. PANEL EM

June 29 Filed Aplt's motion for leave to file a reply brief. 6/28 PANEL EM

June 29 FILED AS OF 5/18/84, CERT. TRANSC. OF RECORD ON APPEAL IN SEVEN VOLUMES: VOLS. I-IV PLDGS (Orig); VOLS. V-VII R/T's (Orig). EM

July 3 Filed aplt's mot. for leave to file oversized brief. (6/29) (Panel) tsp

July 9 Filed aple's response to aplt's mot. for leave to file oversized brief. (7/9) (Panel) tsp

July 9 Filed aple's memorandum regarding authorization of litigation. (7/9) (Panel) tsp

July 22 Filed Order (NORRIS) Aplts' motion for leave to file an oversized suppl' brief of 11 pgs is granted. The brief, recv'd by the Clk on June 29, 1984, shall be filed. Aplts' motion for leave to file an appendix to their suppl' brief is granted. The appendix, recv'd by the Clk on June 29, 1984 shall be filed. eal

July 23 Filed Orig & 15 aplts' suppl' brief previously recv'd, eal

July 23 Filed Orig & 15 aplts appendix to suppl' brief previously recv'd. eal

Aug. 1 Filed Order (WRIGHT, SKOPIL and NORRIS, CJJ) Aplt's mot. for leave to file a reply brief is granted subject to the following conditions. First, the reply brief must be no longer than 10 pgs in length. Second, the subject of the reply brief shall be limited to the question whether the Committee Pltfs were authorized to bring this suit. Thrid, the brief shall be filed no later than 10 days after the date of this order. eal (8/1)

Aug. 13 Filed Orig & 15 Deft-Aplts' reply brief per Court Order of 8/1/84. (10 pgs + Exh); 8/11. PANEL EM

Aug. 22 Filed Orig & 15, motion by Thomas Spinosa & Stanley Adamson to file amicus Curiae brief. [Included in the motion on the same volume are: application for leave for later filing; application to participate in oral argument; and proposed amicus curiae brief. With the motion, is separate volume—Exhibit A in support of application for leave for later filing—in 4 copies) 8/21 [PANEL] EM

Aug. 29 Filed Pltf-Aple's Motion For Leave to file appendix to Pltf's memorandum regarding authorization of litigation and to brief of Plaintiffs-Appellees. 8/29 PANEL EM

Aug. 29 Recvd Orig & 31 Pltfs-Aples' Appendix to Plaintiffs' Memorandum Regarding authorization of Litigation and to Brief of Plaintiffs/Appellees. (21 pgs) 8/29 PANEL EM

Sept. 10 Filed Aplts.' Opposition to Plaintiffs' Motion for leave to file appendix. 9/7/84 PANEL EM

Sept. 13 Filed Order (NORRIS) The mot. for leave to file Amicus Curiae Brief is granted. (9/13) tsp

Sept. 13 Filed Order (NORRIS) Aple's mot. for leave to file appendix to aple's memorandum regarding Authorization of Litigation and to brief of aples is granted. (9/13) tsp

Sept. 13 Filed Orig & 3 aple's appendix to apls' memorandum regarding authorization of Litigation and to brief of aples. tsp

Oct. 1 R'cvd letter from atty. for amicus curiae, objection to consideration of Appendix to Plaintiff's Memorandum Regarding Authorization of Litigation and to Brief of Pltf/Appellees, on the grounds that it is irrelevant, inadmissible, adhominem and partially false. (Panel) 9/28 ogm

Oct. 16 Filed as of 10/15, Notice of action by appellee (S.F. County Republican Central Committee re-

garding authorization of lawsuit; Declaration of Robert R. Bacci & Supplemental declaration of Dolph Andrews regarding authorization of lawsuit; Declaration of Robert R. Bacci & Supplemental declaration of Dolph Andrews regarding authorization of lawsuit by S.F. County Republican Central Committee. (Panel) 10/15 ogm

1985

Jan. 18 Recvd letter dtd Jan. 17 from aple re: decision by Calif. Supreme court and of intention to join the calif. decocratice State Central Committee as Plaintiff in remaining portions of third cause of action. (Panel) tsp

Aug. 5 Filed Order (Wright, Skopil, Norris): Because of the difficult issues presented by this case, we order the parties to file supplemental briefs directed to the following issues: (1) Are the state and county central committees private associations entitled to the full protections of the First and Fourteenth Amendments of the U.S. Constitution? (2) Is California's regulation of the composition of state central committees and the term of committee chairpersons in violation of the First and Fourteenth Amendments? (3) If the Court affirms the district court's invalidation of the statutes challenged in the third cause of action, should the court consider the additional remedies to assure the orderly transition from a regulated to an unregulated system of selection? Appellants should file their brief within 20 days of the date on which this order is filed. Appellees shall file a responsive brief within 15 days thereafter. The briefs shall be no longer than 30 pages in length. This case is ordered vacaged from submission. The case will be resubmitted when both briefs are filed without further order from this court. EM

Aug. 14 Filed aplts' motion for ext. of time to file supplemental brief with a declaration of Goeffrey L. Graybill in support of motion. 08/13 (Panel) -et- (cmk)

Aug. 15 Filed aples' response to aplts' motion for ext. of time to file supplemental brief. 08/15 -ot- (cmk)

Aug. 26 Filed Order (WRIGHT, KOPIL & NORRIS) Appellants' motion for extension of time to file supplemental brief to and including September 23, 1985 is granted. Appellees shall file a responsive brief within fifteen (15) days thereafter. The briefs shall be no longer than thirty (30) pages in length. (8/26) cmk

Sept. 12 Filed as of 9/11, Appellees' motion for ext of time to file a responsive brief to & including Nov. 5, 1985. (PANEL) 9/11 ogm

Sept. 20 Filed Aplts' motion for further ext of time to file the supplemental brief. (Panel) 9/19 ogm

Sept. 23 Filed Order (NORRIS) Appellees' time for filing their responses to supplemental brief is extended to October 23, 1985. (9/23) cmk

Oct. 1 Filed Order (WRIGHT, SKOPIL & NORRIS) Appellants' motion for extension of time to file supplemental briefs to and including October 7, 1985 is granted. Appellees shall file a responsive brief within twenty-eight (28) days after filing of appellants' supplemental briefs. The briefs shall be no longer than thirty (30) pages in length. No further extensions will be granted. (10/1)

Oct. 9 Filed as of 10/7, Orig. & 3 Aplts' Supple Briefs. (22 pgs, excluding the addendum) 10/5 (Panel) ogm

Oct. 21 Filed aplt's mot. for leave to file reply brief. (10/21) (Panel) tsp

Oct. 25	Filed aplt's declaration of Geoffrey L. Graybill in support of mot. for leave to file reply brief. (10/24) (Panel) tsp
Oct. 28	Filed Appellees' memorandum in opposition to appellants' second motion for leave to file reply brief. (10/28) (Panel) dmd
Oct. 28	Filed declaration Cedric C. Chao in opposition to appellants' second motion for leave to file reply brief. (10/28) (Panel) dmd
Nov. 5	Filed aples' Supplemental Brief pursuant to Court order of 8/5/85. (27 pgs) 11/4 PANEL EM
Nov. 5	Filed aples' motion for leave to file declarations in response to third question posed on 8/5/85 order, w/ the declarations attached. 11/4 PANEL EM
Nov. 8	Filed order (NORRIS) the mtn by aplts March Fon Eu, et al for leave to file a reply brief is granted. The brief shall be filed no later than 10 days from the entry of this order and shall not exceed 15 pgs. -db
Nov. 18	Filed Orig & 3 Aplt's Supplemental Reply Brief pursuant to Court order of 8/5/85 & 11/8/85 (11/17) PANEL EM
Nov. 27	Filed Order (WRIGHT, SKOPIL & NORRIS) All supplemental briefs and reply briefs having been received, this case is resubmitted. -ot-
Nov. 29	Filed order (WRIGHT, SKOPIL & NORRIS) All supplemental briefs and reply briefs having been received, this case is resubmitted. -vt-
Nov. 29	CASE RESUBMITTED TO WRIGHT, SKOPIL & NORRIS. -vt
1986	
Jun 18	ORDERED OPINION (NORRIS) FILED & JUDG. TO BE FILED & ENTD.

Jun 18	FILED OPINION—AFFIRMED.
Jun 18	FILED AND ENTERED JUDGMENT. -ot-
Jul 3	Filed aplts' mtn to stay mandate (NORRIS) 7/2/86 -db-
Jul 14	Filed aples' opposition to motion for stay of mandate. 07/14 (NORRIS) -ot-
Jul 16	Filed order (NORRIS) upon due consideration of aplts' mot. for stay of the mandate of this court in the above cause pending the filing of a petition for writ of cert., such petition to be filed within 30 days of this order, it is ordered that the mot. for stay of mandate is granted. tsp
Aug. 06	Rec'd letter dated 08/01, from aple atty Chao not being mention in the advance sheets. -ot-
Aug. 08	Filed aplts' motion for continuance of stay of mandate. 08/07 (NORRIS) -ot-
Aug. 14	Filed Order (NORRIS) it is ordered that the mot. for continuance be granted. tsp
Aug. 14	Filed aplts' notice of appeal to the SC. 08/13 -ot-
Sep. 22	Filed cert. copy of SC order certifing that a petition for writ of certiorari has been filed on Sep. 15, 1986. #86-0434 -ot-
Dec. 5	Copy of SC order certifing that a petition for writ of certiorari has been filed sent to Judge Norris. -dg-
1987	
Jan. 15	Rec'd letter dated 01/12/87, from Spaniol, Jr. Clerk of the SC re-order entered vacating and remanding back to the Ninth Cir. for further consideration in light of Tashjian v. Republican Party of Conn., 479 U.S.—(1986) (Panel) -ot-
Feb. 18	Filed cert. copy of SC Order of 1/12/87, re: vacating judgment of the above court with costs,

and remanding to the US Court of Appeals for further consideration in the light of Tashjian v. Republican Party of Connecticut. (PANEL) EM

Feb. 19 Filed Order (WRIGHT, SKOPIL, NORRIS, CJJ) the parties are directed to submit supplemental briefs of no more than 15 pgs responding to the Supreme Court's remand of this case for further consideration in light of Tashijian v. Republican Party. Eu v. S.F. Co., Democratic Central Committee. The supplemntal briefs shall be filed within 21 days after the filing of this order. tsp

Mar 11 Filed as of 3/10, aplts' motion for extn of time to file supplemental brief on remand. 3/9 PANEL EM

Mar 12 Filed aples' Orig. & 15 copies of supplemental briefs (13 pgs). 03/12 (Panel) -ot-

Mar 12 Filed aples' response to aplt's motion for ext. of time to file supplemental brief on remand. (Panel) 03/12 -ot-

Mar 19 Filed Order (NORRIS) aplts' deadline for submitting their supplemental brief is hereby ext to 3/27/87. Aples can submit a reply brief of no more than 5 ps on or before 4/6/87. tsp

Mar 30 Filed Original and 15 copies of Aplt's Supplemental Brief. (15 pgs) 3/27 PANEL cmk

Apr 6 Filed Original and 15 copies of Aple's Supplemental Brief. 5 pgs 4/6 PANEL cmk

Aug 18 ORDERED OPINION (NORRIS) FILED & JUDG. TO BE FILED & ENTD.

Aug 18 FILED OPINION—AFFIRMED.

Aug 18 FILED AND ENTERED JUDGMENT. -ot-

Aug 31 Filed aplts' motion for ext of time to file petition for rehearing to Sep. 15, 1987. 08/28 (Panel). -ot-

Sept 8 Filed order (NORRIS) Aplts' motion for an ext of time to and including Sept. 15, 1987 within which to file a petition for rehearing and suggestion for rehearing en banc, is hereby GRANTED. This Corut's mandate is also stayed until Spet. 15, 1987.

Sept 8 Recvd aplt's motion for stay of mandate (in the event motion for extn of time to file petition for rehearing en banc is denied) 9/4 (PREMATURED; SEE ORDER OF 9/8) (returned to counsel) SEE FOURTH SHEET 9/24 served panel copies of this motion.

Sept 15 Filed aples' opposition to motion for stay of mandate. 09/15 (Panel) -ot-

Sept 15 Filed aplts' petition for rehearing & suggestion for rehearing en banc. 09/15 (Panel & Active Judges) -ot-

Sept 17 Filed aplts' notice of errata re: petition for rehearing & suggestion for rehearing en banc. 09/16 (Panel & Active Judges) -ot-

Sept 18 Filed declaration of Peter D. Kelly in opposition to aplts' motion for stay of mandate. 09/15 (Panel) -ot-

Oct 29 Filed Order (WRIGHT, SKOPIL & NORRIS) The Court's opinion filed on Aug 18, 1987, is hereby amended as follows: SEE CASE FILE. The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected. -ot-

Nov 05 Filed aplts' motion for stay of mandate to Jan. 27, 1988. 11/04 (NORRIS) -ot-

Nov 17 Filed order (NORRIS) IT IS ORDERED that the motion for stay of mandate be, and the same is hereby denied. -vt-

Nov 17	Filed as of 11/16, aples' opposition to aplts' renewed motion for stay of mandate. (null—see court order of 11/17/87) 11/16 -ot-
Nov 19	Filed aplts' notice of appeal to the SC. 11/18 -ot-
Nov 25	Mandate issued.
1988	
Jan 06	Filed aplts (Aty. Gen of St. of CA & Smith D.A. of S.F.) notice of appeal to the Supreme Court of the U.S. 01/05 -ot-
Jan 14	Filed aplts (Atty Gen of St. of CA) amended notice of appeal to the S.C. 01/13 -ot-
Feb 8	Rec'd as of 2/5, SC notice of filing petition for certiorari on 1/27/88. (SC# 87-1269) cmk
Apr 22	Filed cert. copy of SC order of April 18, 1988, re: "The statement of jurisdiction in this cause having been submitted and considered by the Court, in this case probable jurisdiction is noted. (PANEL) cmk

DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVIE E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

D.C. #C-83-5599 MHP

Date	NR.	APPEAL PROCEEDINGS
1983		
Nov 17	1	COMPLAINT: Summons Issued.
	2	Issued—Order Setting Conference, 2/27/84, 9:30 a.m.—Clerk.
Dec 5	3	Plaintiff's Proof of Service on All Defendants of #1 and #2 and Notice of Right to

Disposition by Magistrate, by mail. See documents for list of those served and on what dates.

4 —FIRST AMENDED COMPLAINT

Dec 6 5 Plaintiffs' Amended Proof of Service of First Amended Complaint: upon defendants, by mail, on 12/6/83.

Dec 16 6 Defendants Eu, Van de Kamp, Smith, Himmelsbach and Shelley's ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF.

7 Defendant O'Malley's ANSWER BY WAY OF DISCLAIMER.

8 Defendant John Meehan's ANSWER BY WAY OF DISCLAIMER.

Dec 20 9 Plaintiffs' First Set of Interrogatories and Requests for Admission to Defendant March Fong Eu.

10 First Set of Interrogatories and Requests for Admission to Defendant John Van de Kamp.

11 Defendants Philibosian Co. of L.A.'s ANSWER TO FIRST AMENDED COMPLAINT.

Dec 27 12 Defendant Nail's ANSWER BY WAY OF DISCLAIMER.

1984

Jan 12 13 Stipulation that Defendants may have through 1/30/84 to respond to Plaintiffs' First sets of Interrogatories and Requests for Admissions.

31 14 Defendants Van de Kamp, Smith, Himmelsbach & Shelley's Responses to Plaintiffs' First Set of Interrogatories and Requests for Admissions.

15 Defendant March Fong Eu's Responses to Plaintiffs' First Set of Interrogatories and Requests for Admissions.

Feb 17 16 William O'Malley's Status Certificate of Defendant's O'Malley Meehan and Nail: 2/27/84 at 9:30a.m.

17 Plaintiffs' Status Certificate for Conference: 2/27/84 at 9:30am.

21 18 Defendants' Status Conference Certificate.

27 19 MINUTES: (c/r JoAnne Farrell, Status held, Case continued to 4/2/84 10:30am for plaintiff's motion for summary judgment, Plaintiff's request to file brief in excess of 25 pages granted.

Mar 2 20 ORDER: that defendants O'Malley, Meehan and Nail are dismissed MHP.

5 RECEIVED: Proposed order re plaintiffs summary judgment motion.

21 Plaintiffs declaration of MaryKing in support of motion for summary judgment.

1984

Mar 5 22 Plaintiff declaration—James Fay in support of motion for summary judgment.

23 — —Donald Fraser —

24 — —Mary Gingell —

25 — —Miller Hudson —

26 — notice of motion and motion for summary judgment set 4-2-84/10:

27 — memo in support —

28 — declaration—Dolph Andrews —

29 — — —Hugh Bone —

30 — — —Carolyn Wallace —

31 — — —Nancy Walker —
32 — — —Mary Vail
33 — — —David E. Sturrock —
34 — — —Catherine C. Rockwood —
35 — — —Thomas Romero —
36 — — —Austin Ranney —
37 — — —Linda Post —
38 — — —Karen Marchioro —
39 — — —James MacGregor Burns —
40 — — —Bert Coffey —
41 — — —Walter W. Layson —
42 — — —Eugene Lee —
43 — — —Robert Mack —
44 — — —Malcolm E. Jewell —
45 — — —Paul R. Dieseth —
46 — — —Edmond Costantini —

1984

Mar 5 47 Plaintiffs declaration of Roy Christman in support of motion for summary judgment. —Exhibits

6 RECEIVED: proposed order.

48 Defendants' Notice of Motion and Motion to Dismiss set on 4-2-84 at 10:30 am.

49 — Memo in support of # 48.

8 50 Declaration of Roy Christman in Support of Summary Judgment set for 4-2-84 @ 10:30 am.

51 Notice of Order Re: Disclaiming Defendants as to parties delivered on 3-7-84.

16 52 ORDER: that Defendant's opposition to Plaintiffs' motion for summary judgment may be filed by 3-26-84; that Plaintiffs' reply to Defendants' opposition may be filed by 4-2-84; that hearing on Plaintiffs' motion for summary judgment and Defendants' motion to dismiss shall be held on 4-9-84 @ 10:30 am unless Court sets another date filed no earlier than 4-6-84; that after hearing Defendants' may seek leave to introduce evidence into the record not earlier available MHP.

ENTERED 3-16-84 Clerk.

20 RECEIVED: Letter to James Brosnahan dated 3-19-84 from Graybill Deputy Atty. General.

26 RECEIVED: Proposed Order Re: Motion to Dismiss.

53 Plaintiffs' Memo in Opposition to Defendants' Motion to Dismiss.

54 —Declaration of Paul R. Dieseth in Opposition to Defendants' Motion to Dismiss set 4-9-84—10:30 am.

29 RECEIVED: Proposed Order Re: Summary Judgment.

55 Defendants' Notice of Motion and Motion for Summary Judgment set 4-9-84 @ 10:30 am.

56 —Memo in Opposition to # 55 and in support of Defendants' Motions to Dismiss and for Summary Judgment.

57 —Declarations Re: # 56.

1984

Apr 2 58 Plaintiffs' Reply memo in support of Plaintiffs' Motion for Summary Judgment.

59 —Supplemental Declaration of Mary Vail Re: Summary Judgment.

60 — — —of James MacGregor Burns Re: Summary Judgment.

61 — — —of Edmond Costantini Re: — —

62 — — —of Linda Post Re: — —

63 Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss.

3 64 —Declaration of John J. Meehan in support of Defendant's Motion to Dismiss and for Summary Judgment.

65 — —Leo Himmelsbach Re: #64

66 — —Michael E. Nail Re: #64

67 — —William O'Malley Re: #64

68 — —Jack E. Shelley Re: #64

6 69 Plaintiff's Declaration of Dolph Andrews Re: Authorization of Lawsuit:

70 — Mary Gingell — —

71 — Robert Mack — —

72 — Linda Post — —

73 — Catherine C. Rockwood — —

74 — Carolyn Wallace — —

75 Defendant March Fong Eu's Declaration of Robert Podesta in support of Defendants' motion to Dismiss and for Summary Judgment.

9 76 Plaintiff's Supplemental Declaration of Walter W. Layson in support of Plaintiff's motion for Summary Judgment.

77 —List of cases from USSC and ninth circuit since 1970 concerning first amendment speech and association rights and applying compelling state interest analysis.

1984

Apr 10 78 MINUTES (c/r Paul Schiller) Plaintiff's Motion for Summary Judgment Defendant Eu and Philibosian's Motion to Dismiss—Court gave its tentative ruling on both; Order to be prepared today by plaintiff a memorandum will follow MHP.

79 Plaintiff's Proof of Service on #'s 76 & 77.

Apr 12 80 Defendant Robert Philibosian's Declaration in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendant's motion to Dismiss and for Summary Judgment.

13 81 REPORTER'S TRANSCRIPTS of 4-9-84 C/R Paul Schiller.

16 82 REPORTER'S TRANSCRIPTS of 2-27-84 C/R Joanne M. Farrell.

83 ORDER: that plaintiffs' motion for Summary Judgment as to the first cause of action is GRANTED in its entirety—that as to the second cause of action all proceedings are hereby STAYED until the California Supreme Court issues an order; that plaintiffs' motion for Summary Judgment as to the third cause is GRANTED IN PART—see order for details—, that Defendants' motions to Dismiss as to first and third causes for summary judgment are DENIED; that the Clerk enters this forthwith as final judgment for Plaintiffs' as to the first and third causes insofar as Summary Judgment is granted; that Defendants' motion to stay this

order is hereby DENIED MHP ENTERED 4-16-84 Clerk.

84 JUDGMENT: that Plaintiffs' motion for Summary Judgment as to the first cause of action is GRANTED; and that Plaintiff's motion for Summary Judgment as to the third cause is GRANTED IN PART; that Defendants' motion to Dismiss and/or for Summary Judgment as to the first and third causes of action is DENIED MHP. ENTERED 4-16-84 Clerk.

85 Defendants' Notice of Appeal USCA #84-1851.

18 86 —Declaration of Personal Service of # 85.

—Docket Fee Payment Notification Form mailed to USCA.

Apr 12 87 MINUTES: (c/r Eric Wik) Phone Conference—Extension of time to file opposition to Summary Judgment motion GRANTED; Defendant's response due 3-26-84, Plaintiff's Reply 4-2-84; Hearing set for 4-2-84, continued to 4-9-84 @ 10:30 MHP

1984

Apr 19 88 Plaintiffs' Declaration of Mary King Re: Authorization of Lawsuit.

89 — — Thomas Romero — —

23 90 Appellants' Designation of Reporter's Transcripts of 2-27-84, 3-12-84 and 4-9-84.

26 RECEIVED: Letter to Clerk from Defendant's Counsel Re: 9th Circuit Order Granting Emergency Stay.

91 Letter to Clerk from Defendant's Counsel dated 4-25-84 Re: 9th Circuit's Order Granting Emergency Stay.

May 3 92 ORDER: Defendants' Motion for Summary Judgment is DENIED (see Order) ENTERED 5-3-84 Clerk. MHP

93 REPORTER'S TRANSCRIPTS 3-12-84 c/r Eric Wik.

RECEIVED: Letter to Clerk from Graybill dated 5-4-84 Re: Proposed Order dated 4-10-84.

8 94 Appellant's Designation of Clerk's Record on Appeal.

95 —Declaration of Personal Service of # 95.

11 96 Letter to clerk from Defendant's Counsel dated 5-4-84 Re: Copy of Proposed Order submitted to Court 4-10-84 for Summary Judgment.

16 —mailed Certificate of Record to USCA and Counsel.

17 97 ORDER: that at Footnote 1, delete "Santa Clara" and Substitute "Contra Costa" MHP

21 98 Appellee's Designation of Clerk's Record on Appeal.

Jun 1 100 USCA ORDER: District Court to make findings of fact & Conclusions of law with respect to the authority of appellees to bring the action appeal.

101 Plaintiffs' further Submission Re: Authorization of Lawsuit.

102 —Declaration of Cedric C. Chao Re: Further Submission of Authorization Materials.

1984

Jun 1 103 ORDER: Court finds that Plaintiff central committees & each of them have authorization

and capacity to bring and maintain litigation; and the Court will not intrude as to whether appellees have authority to bring an appeal, the appellate court is to make that determination MHP.

19 108 Plaintiffs' 3rd Submission Re: Authorization of Lawsuit.

109 —Declaration of Cedric C. Chao Re: 3rd Submission of Authorization Materials.

21 110 RECEIVED: Proposed Supplemental Order following Remand.

22 Record on Appeal mailed to USCA.

Jul 2 111 Receipt from USCA for Record on Appeal.

11 112 Defendants Thomas Spinosa & W. Stanley Adamson's Notice of Motion to be joined and to Intervene & set aside Summary Judgment 8-27-84/10:30.

113 —Points and Authorities in support of # 112.

114 —Supporting Declaration of Thomas Spinosa.

115 —Proof of Service by Mail on 112-114 & Proposed Order & Answer.

Aug 13 RECEIVED: (proposed) Order Re: Motions to Intervene & Summary Judgment.

RECEIVED: Motion & Order for leave to file oversized brief.

116 Plaintiff's Memo in Opposition to Motion of Spinosa & Adamson to Intervene, to join and set aside final Judgment.

1984

Aug 13 117 Plaintiffs' Exhibits to Opposition to Motions of Spinosa & Adamson to Intervene, Join & set aside Final Judgment.

118 —Declaration of Cedric C. Chao in support of Motion to file brief.

119 —Further Declaration of Mary Gingell Re: Authorization of Lawsuit.

120 — — — Thomas Romero Re: — —

121 — — — Mary King Re: — —

14 122 Plaintiff's Table of Authorities to Memo in Opposition to Motion of Spinosa & Adamson to Intervene 8-2-84 @ 10:30 a.m.

123 —Corrected Exhibits to Opposition to Motions of Spinosa and Adamson Re: Intervention.

15 124 Defendants' response to Motions to be Joined, Intervene or set aside.

20 125 Movants Spinosa & Adamsons' response brief.

126 —supporting declaration of Thomas Spinosa.

127 —Declaration of Stanley Adamson.

24 128 Plaintiffs' Supplemental Memo in Opposition to Spinosa's Motions set 8-27-84 @ 10:00 a.m.

129 —Declaration of Arlo Hale Smith, Jr.

130 Movants' Motion to Strike & Objection to Admisability of "Faulkner Press Release" & Conditional Offer of Proof.

131 MINUTES: (c/r D. Davenport) Motion to be joined to Intervene & set aside Summary Judgment by Spinosa & Adamson 1st & 3rd DENIED, 2nd DENIED without prejudice. MHP.

31 132 ORDER: any Motion to Intervene in 2nd cause of action is DENIED without prejudice (see order) MHP.

1984

Sep 27 137 REPORTER'S TRANSCRIPTS of 8-27-84 c/r D. Davenport.

1985

Jan 16 138 Plaintiff's notice of decision by Calif. Supreme Court, etc.

139 —declaration of Peter D. Kelly.

1986

Nov 20 144 USCA memorandum returning record on appeal.

Dec 1 148 Copy of Judgment from USCA that decision of USDC is affirmed.

2 149 Clerks letter to counsel of record re Mandate.

1988

May 13 Sent file per clerk to USCA.

19 150 Acknowledgment letter returned from USCA.

25 Reporters' Transcript (# 81, 82 & 93) mailed per request of clerk to USCA.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Marilyn Hall Patel, Judge

THE SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET. AL., Plaintiffs,	)	
vs.	)	No. C 83 5599 MHP
MARCH FONG EU, ET. AL., Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
February 27, 1984

Reported By:
Joanne M. Farrell, CSR

APPEARANCES

For the Plaintiffs:
Morrison & Foerster,
By: Cedric C. Chao, Esq.
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

For the Defendants
March Fong Eu, et. al.:
John K. Van De Kamp
Attorney General of the
State of California
By: Geoffrey L. Graybill, Esq.
Assistant Attorney General
1515 "K" Street
Suite 511
Sacramento, CA 95814

For the Defendants
Robert Philibosian,
District Attorney,
County of Los Angeles: DeWitt W. Clinton,
County Counsel, County of
Los Angeles
By: Phillip W. Hickock,
Deputy County Counsel
Room 648
500 W. Temple Street
Los Angeles, CA 90012

For the Defendant
William O'Malley: John B. Clausen,
County Counsel, County of
Contra Costa
By: Arthur W. Walenta
Assistant County Counsel
P.O. Box 89, County
Administration Building
Martinez, CA 94553

PROCEEDINGS

(p. 2) The Clerk: Civil Action 83-5599, San Francisco County Democratic Central Committee et. al. versus March Fong Eu, et. al. for status. Counsel, your appearances, please.

Mr. Chao: Cedric Chao for the plaintiff.

Mr. Graybill: Geoffrey Greybill for the state defendants and the district attorneys.

Mr. Hickock: Phillip H. Hickock, deputy for Los Angeles County District Attorney.

Mr. Walenta: Arthur Walenta, Assistant County Counsel, appearing for the disclaiming district attorneys, O'Malley, Main & Nale.

The Court: Thank you, As I read your papers, you intend to file a motion for summary judgment.

Mr. Chao: We do, Your Honor. We intend to file next week, and with the court's indulgence, we'd like to set a date at the earliest possible time, and we would suggest April 4 through April 6, with the court's indulgence, and if that's convenient with counsel.

The Court: Do you intend to file cross-motion for summary judgment or a motion to dismiss, or how are you going to handle yours?

Mr. Graybill: Your Honor, we feel there are some very significant jurisdictional issues here with respect to all sets of plaintiffs, which we believe ought to be resolved (p. 3) at the outset. And there may be a limited amount of discovery that we need with respect to those jurisdictional issues. We are dealing here with some County Central Committees. We are dealing with some individual members of those County Central Committees, some politically active persons and two associations that are involved in attempting to change the law by one means or another with respect to strengthening the political parties in the state.

We think there are jurisdictional problems with respect to each of those categories, and—

The Court: Are you referring to standing, essentially?

Mr. Graybill: We are referring to standing, case and controversy, standing under the Civil Rights Acts that have been cited, and those can be very complex issues in themselves. There's a lot of law in the area, and we

would ask the court to allow us to file our papers for dismissal on jurisdictional grounds by the end of April. The schedule—

The Court: He's going to beat you with filing, though, on a summary judgment motion. Can you get your papers filed earlier than that?

Mr. Hickock: Your Honor, perhaps I'm the one who's requesting the delayed date. As the court's probably well aware, this is an election year. We have the primaries scheduled for June 15. Los Angeles County is in the process right now for preparing all the elections materials. My (p. 4) primary assignment is to monitor and take care of any legal problems which arise regarding that. April 9 is the last date for condidates to file nomination papers. Historically we have always had a rash of judicial challenges before and after that date.

Mr. Chao: Perhaps, Your Honor, that points out exactly the reason why I think we should move ahead. If upon review of the complaint it's clear that many of the plaintiffs would like the opportunity to endorse in the June, 1984 elections, and if they were to have that opportunity to do so, then they would start to gear up in about early, mid-April, and that is one of the reasons why we believe it would be appropriate to set this on for summary judgment at an early date. We are going to raise some issues about the case in controversy.

I read the answer filed by the secretary of state and the attorney general. I did not read that answer to say that they, at that time, contested case in controversy. In fact, I read their answer to admit there was a case in controversy.

You know, they have their right to file motions. However, we believe that this should be put on for hearings, with the court's indulgence, the first week of April.

The Court: Also, is there going to be some argument with respect to the second claim, that the court should abstain by reason of unger?

Mr. Graybill: Very definitely, Your Honor, and this (p. 5) is another reason why there really should not be a rush to judgment at this point, because when the supreme court of California speaks on the issue of non-partisan endorsements by party central committees, they are very likely to be speaking to the nature of the powers of those entities, which goes to some of the very central issues and the other two claims.

The Court: The matter of rushing to determine whether or not the court should reach any of those issues in a timely fashion, and it's all going to become, if not moot, at least for this year, certainly, if it's not moved on relatively soon. And I'm concerned about the fact that now you want to raise your motions to dismiss later in April. Your answers were filed in December. There's been plenty of time to file motions to dismiss if you wished to do so on any of those bases, so I am going to set forth an early hearing date, and then I can look at all these issues that you raised on their merits and not have it delayed by reason of being election year.

That's the very reason why it shouldn't be delayed. The action was filed, when, back in October, November?

Mr. Chao: November 17, Your Honor.

The Court: November, and the answers, at least some of them, I haven't gone through all of them, but some

of them were filed in December. And some discovery has been done, so I think that if you intend to move to dismiss or move for (p. 6) extension or whatever, that that's going to have to be set down very early.

Mr. Graybill: Your Honor, I understand the court's concern, but if we stop to think about it a minute, this law has been in effect for, you know, generations. The lead time for preparation of elections is well-known, and the plaintiffs chose the particular time to file their lawsuit. I don't know if it serves the ends of justice to telescope the proceedings when they are going to be complex, sensitive issues, both of jurisdiction and extension issues as well as complicated First Amendment issues.

The Court: The case was filed in November. It's not going to sit on my calendar, I don't care what it is, for an inordinate length of time. He's requested to file a motion for summary judgment, set the matter for hearing. And I said, you could have filed motions for dismissal in December. The fact that you chose not to do so is a matter that's within your province. But in this case, I'm setting the dates and we are going to have to proceed.

If there's basis for extension or if it appears the issues are so complex that further briefing needs to be done, I will make the request, but I don't think it's unreasonable at this stage for counsel to request that the matter be set down for hearing on some dispositive motions.

Mr. Graybill: I understand that, Your Honor, but (p. 7) I have come into involvement in this case just within the past month. The attorney that was involved in this from our office before has taken a leave and before he left, he had a conversation with plaintiff's counsel in which

plaintiff's counsel disavowed any belief that the issues in this case could be resolved by summary judgment.

Mr. Chao: This is not correct, Your Honor. I don't want to get in an argument.

The Court: That has nothing to do with motions to dismiss, and in any event remains to be seen whether, in fact, they can be resolved on summary judgment or any other kind of motions. We will set the hearing on April 2 at 10:30. Papers are to be filed by March 5.

Mr. Graybill:: March 5, Your Honor?

The Court: March 5.

Mr. Graybill: That's next Monday.

The Court: That's correct. If you intend to file a motion to dismiss, counsel, and he's going to file this motion for summary judgment in the beginning of March, I'm going to be hearing the motion for summary judgment before I hear any motion to dismiss, apparently. Now, you chose not to file them. It's up to you. If you want to file a motion to dismiss and have it heard, then you better file it by the time he files the motion for summary judgment.

Mr. Graybill: So the filing papers for all these (p 8) preliminary motions are due March 5?

The Court: March 5.

Mr. Chao: Your Honor, there's one other matter. As I read the local rules, we are to ask leave of court to file a brief that's over 25 pages in length, and if I may make such a motion at this time. Our memo of points and authorities will be in excess of 25 pages.

The Court: By how much?

Mr. Chao: Well, it is—I'm not sure exactly, Your Honor. I would say we would need about 50 pages.

The Court: How about other counsel??

Mr. Graybill: Having to get something on file by March 5, I don't know that we are going to be able to get that much material together, but properly briefed, I think that's realistic. I think we are also going to need, and I guess we will have to leave it to the discretion of the court, we are going to need some discovery on a jurisdictional issues. Whether that's now or later, it's going to have to happen.

The Court: What discovery will you need?

Mr. Graybill: With regard to the case in controversy issue, we believe that the allegations with regard to the interference with the powers of the Central Committees to make regulations in contradiction of some statutes, those are allegations. There are no specific allegations of what (p. 9) regulations they have attempted to make that they feel are prohibited by the statutes, and as a general matter, I don't thing that states any case for controversy. But it wastes a lot of time if we don't know what their actual contentions are with respect to the inhibition or their power to make regulations.

The Court: Have you set forth any factual basis for that in the complaint?

Mr. Chao: Yes, there is, in the complaint, Your Honor, and there will be affidavits in support of the motion for summary judgment which will adequately address all the concerns raised by counsel.

The Court: Counsel, let's do this, because the time is short, admittedly. I will give you a chance to respond to their motions for summary judgment without any discovery in your response. If you need additional discovery, set forth a response what additional discovery you need and approximately how much time you need to do it. I will not rule on any motion for summary judgment if there is discovery that needs to be done in order to address it.

With respect to the jurisdictional aspects of it, it does seem to me that the kind of motion that you're talking about as far as dismissal ought to be able to be done without any discovery. If you can make a good showing in your papers as to why you need discovery on the motion to dismiss, then (p. 10) I will consider whether some appropriate time is necessary in order to allow you to do discovery on that, as well.

Mr. Graybill: And the full statement on that can be resolved to the opposition to the motion for summary judgment when the papers are due?

The Court: When you file your motion to dismiss, you set forth the discovery you need with respect to that, if any. I have no doubts about that. It seems to me what you need the discovery on it to respond to the motion for summary judgment, and then you may so state with respect to the opposition what discovery you need, and then I will not resolve that motion if it appears that there is discovery that needs to be done without giving you an opportunity to do discovery, which of course the rules provide for. Okay?

Mr. Chao: Thank you very much.

The Court: I would request this. If there is some clarification needed with respect to issues that are being

raised by plaintiff in the complaint, that the plaintiff co-operate in providing informal discovery by way of either providing you with a letter or some statement so that if you need some fleshing out of the complaint with respect to those factual allegations, you refer to exactly how they have been interfered with in terms of making regulations, policy, whatever, that he can provide that to you in writing.

Mr. Chao: Very well.

(p. 11) The Court: Okay?

Mr. Graybill: I would hope that we could follow that course.

The Court: If you have any problems, you can call my clerk and set up a phone conference.

Mr. Walenta: May it please the court—

The Court: By disclaiming, we are not going to see your happy face again until all of this is over?

Mr. Walenta: No. We'd like permission not to appear and also, that counsel not be called upon to serve any papers on us within the constraints indicated in our status response, which is that papers that demand any monetary judgment against the disclaiming defendants we wish to receive. If you need an order to that effect, I'll provide it.

The Court: Is there any objection by any other party?

Mr. Chao: We have no objection, Your Honor.

Mr. Graybill: No.

Mr. Hickock: No.

The Court: Will you submit an order?

Mr. Walenta: We shall so do that.

Mr. Chao: Did Your Honor rule on our leave to file a brief in excess of 25 pages?

The Court: I can see why you probably need some. No more than 50, then, and no more than 50 in any opening (p. 12) papers. Your opposition, can you contain that to 35, do you think?

Mr. Graybill: I would hope so.

The Court: Well, the opposition may be no more than 50 pages, also. However, in your reply, no more than 25.

Mr. Chao: Very well. Thank you.

Mr. Graybill: Thank you.

Mr. Hickock: Thank you.

Mr. Walenta: Thank you.

(Hearing concluded)

CERTIFICATE OF REPORTER

I, Joanne M. Far. ll, the undersigned reporter of the United States District Court of the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, do hereby certify:

That the foregoing transcript, pages numbered 1 through 12, inclusive, constitute a true, full and correct transcript of my shorthand notes taken as such reporter

of the proceedings hereinbefore entitled, and reduced to typewriting to the best of my ability.

(Signed) Joanne M. Farrell
JOANNE M. FARRELL
CSR NO. 4838

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE: HONORABLE MARILYN HALL PATEL, JUDGE

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL,	)	
PLAINTIFFS,	)	
VS.	)	NO. C 83-5599 MHP
MARCH FONG EU, ET AL,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT

MONDAY, MARCH 12, 1984

TELEPHONE CONFERENCE

APPEARANCES:

JAMES BROSNAHAN, ESQUIRE
CEDRIC CHAO, ESQUIRE
RICHARD MARKLAND, ESQUIRE
PHILLIP HICKOK, ESQUIRE
GEOFFREY GRAYBILL, ESQUIRE
PAUL DIESETH, ESQUIRE
DEBRA LEON, ATTORNEY AT LAW

REPORTER: ERIC WIK, CSR #1245

• • •

(p. 9) Those are the three main points. There is another scheduling point, given the situation, and I don't want to burden anybody with it, but Mr. Chao and I are—who are the lead counsel—he and I are on this case—start an antitrust case in Denver on April the 9th, and that is supposed to go two months, but we would like to see a resolution of this so that the plaintiffs could be guided by whatever resolution there is, in time for the June primaries, and we would close by saying that their rights in these matters are pretty high on anybody's scale of priorities and they are not asking for monies they are not asking for what some people might say are trivial things.

They would like to express their opinions with regard to elections which are upcoming If this continuance is granted they will be unable to do that.

The Court: When was this action originally filed? I don't have the papers in front of me.

Mr. Dieseth: There were two filings, Your Honor. It was originally filed in the middle of November, November the 17th, I believe.

Mr. Graybill: That is correct.

Mr. Dieseth: There was a first amended complaint filed about a month later in, I believe, mid-December.

The Court: Was there any reason why the motion was not brought on earlier, because one of the problems, (p. 10) in all fairness to the defendants, it is a substantial issue to which they have to respond, or issues to which they have to respond, and you know, it was brought relatively, well, several months after it had been filed and in

terms of any critical time involved of course, that only impacted upon the criticalness of the time.

Was there any reason why it couldn't have been brought on earlier?

Mr. Brosnahan: Just a gathering of authorities, if the court please, and the organization of the plaintiffs, in order to bring the case, was quite a laborious enterprise, given all of the different political organizations and all of that.

The Court: Mr. Brosnahan, you wouldn't suggest that it isn't going to be substantially laborious on the part of defendants to respond to all of that?

Mr. Brosnahan: I think it is laborious, but I think the—part of their case is to explain why they restrict this kind of speech and association. That I would expect them to know. That is our position, Your Honor, they should know why they do this. They have a whole regulatory scheme out there. They ought to know why they do it.

The Court: The problem is being able to respond to that question, or those issues, within a relatively short period of time.

(p. 11) Mr. Brosnihan: I realize that.

The Court: How much leeway do you have, do you and Mr. Chao have in your schedule in Denver? In other words, is that case actually going to start on April the 9th?

Mr. Brosnahan: We are in front of Judge Feinsilver and, Your Honor knows how these matters are, but Judge Feinsilver has impressed us greatly with the idea that this is going to start on April the 9th. There doesn't seem to

be a resolution in the offing. I don't want to burden everybody with that now, but it is a problem, to some extent.

The Court: Well, what I am contemplating is some reasonable extension, not to the extent requested by the defendants, but some reasonable extension of time. The problem that results is that the hearing would have to be postponed, either until the end of that week, where it is now set, or until April the 9th.

Now, I suppose its depends—or sometimes that week—it depends on what kind of leeway you have to either get away or plan to start that case a day later, or whatever.

Mr. Brosnahan: If Your Honor sets something, I will go immediately to Judge Feinsilver and ask him for his indulgence, whatever it might be.

The Court: Well, how long will it take for you to respond, and file your reply to the defendants' papers?

Mr. Brosnahan: We can do that in a week or ten (p. 12) days, I think.

The Court: Well, what I will do is I will give defendants until the 26th of March to respond, and I will give plaintiffs until the 2nd of April to file their reply, I mean, keep in mind that I am going to have to read this, and come up with a decision at some point, as well.

What I would prefer to do is set the matter for April the 9th. How is that calendar right now? Do you know? April the 9th at 10:30 for a hearing. If you have a problem with Judge Feinsilver, what I think we can do is arrange to have it heard that Friday. I would not have had

as much time to go over the papers at that time, that is the problem .

Mr. Brosnahan: That is fine. I will try to communicate with Judge Feinsilver, as well.

The Court: I know that doesn't give defendants as much time as they asked for, but time is critical. I am keeping in mind the burden that you do have.

If there are factual issues that you have not been able to reach, either because of discovery or investigation problems, then I suggest what you do is that you set those forth, those problems forth in your papers when you file them. Now, it is not automatically going to give you additional time to file papers after the hearing. So don't depend upon that. But if those are critical, and you have not been able to compile whatever factual matters that you have to have (p. 13) in order to respond, you may set those forth in your papers here when you file them on March the 26th.

Mr. Graybill: That has been our main concern, is being able to protect the record on appeal by providing as much factual background as possible, because the United States Supreme Court, just this term, in a case called *United Building and Construction Trades Council of Camden vs. the Mayor and City Council of the City of Camden*, indicate that in this type of a case, where you are litigating constitutional issues, the factual background is critical.

The Court: Well, what I am suggesting is that I am going to look very, very carefully at diligence and necessity in this case, but I am certainly not going to decide a case based upon a partial record. That bodes poorly for

fitting it back at some point in time, and having to do it over again, which I really don't want to do.

So while I recognize that time is of the essence in this connection, I do expect that we will be able to decide it on a full record. So if you can show in your papers when you file them on March the 26th, that there are factual issues that you have not been able to obtain evidence on because of the time constraints, and that you have exercised due diligence, and they are necessary to the resolution of the case, then I will consider that, but what I am talking against is using that as an open door for not doing some things between (p. 14) now and March the 26th.

Mr. Graybill: We are proceeding—this is Jeff Graybill in Sacramento, Judge Patel. We are proceeding ahead with all the resources that are at our disposal on this. One thing I would inquire of the court.

The Court: Yes.

Mr. Graybill: The defendants have a motion to dismiss on jurisdictional grounds.

Should that proceed as scheduled on April the 2nd, or should it be heard concurrently?

The Court: Well, let's just hear them concurrently at this stage. I told you my feelings about that. That could have been filed a long time ago. If you are going to file it, then I will be heard on the same date.

Mr. Graybill: Okay. It has been filed, Your Honor.

The Court: Has it been filed? Well, then, it will be heard on the same date.

Would you submit an order, please, and the order will indicate that you are given until March the 26th to file your opposition. Plaintiffs are given until April the 2nd to file their reply, and the matter is set for hearing on April the 9th at 10:30, absent some other order by the Court setting it for no earlier than April the 6th.

Mr. Graybill: Your Honor—

The Court: Yes.

(p. 15) Mr. Graybill: Was that request for an order directed to defendants?

The Court: Yes. You are the one who is asking for it, so you get to do the paperwork.

Mr. Graybill: Very well, Your Honor.

The Court: Anything further?

Mr. Brosnahan: No, thank you.

The Court: Thank you.

Mr. Brosnahan: Thank you. Okay.

The Court: Bye-bye.

Mr. Brosnahan: Goodbye.

(Telephone conference concluded.)

CERTIFICATE OF REPORTER

I, Eric Wik, the undersigned reporter pro tempore of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, do hereby certify:

That the foregoing transcript, pages numbered 1 through 15, inclusive, constitute a true, full and correct transcript of my shorthand notes taken as such reporter to the proceedings hereinbefore entitled, and reduced to typewriting to the best of my ability.

/s/ Eric Wik
ERIC WIK, C.S.R. # 1245

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

——ooo——

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL.,	
PLAINTIFFS,	
-VS-	NO. C-83-5599-MHP
MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA, ET AL.,	SAN FRANCISCO, CA MONDAY, APRIL 9, 1984
DEFENDANTS.	

MOTION FOR SUMMARY JUDGMENT AND
MOTION TO DISMISS

REPORTED BY: PAUL SCHILLER, C.S.R.

(p. 12) It became codified as part of the truth in endorsements, because impostors, namely the California Democratic Council and the California Republican Assembly, were making it appear that they were making official endorsements on behalf of the parties, and I think the indications are that the parties themselves got in there and got the statutes passed, "we don't do this, we don't want anybody doing it in our name."

The Court: Just a moment. If there is a Central Committee, who is the plaintiff in this action, who wishes

to endorse a particular candidate, and they vote to do so in a direct primary, you are suggesting that they may do so and not be in violation of the law?

Mr. Graybill: Well, they are obviously in violation of Elections Code Section 11702.

The Court: Yes.

Mr. Graybill: In our view, they are not in violation of the Elections Code Section 29430 or 29102. Those are the statutes that plaintiffs ironically enough insist they must be prosecuted under.

The Court: Let me ask you about violation of 11702. The Central Committee of the city and county of San Francisco decides that there is a particular candidate they want to endorse in the direct primary, and despite the law to the contrary, based upon your assurances, of course, (p. 13) that they are not going to be prosecuted, they go ahead and endorse this candidate and let it be known through various kinds of brochures, communiques, whatever, that this particular candidate is being endorsed.

And you are approached by a very vociferous opposing candidate, who is very unhappy about this, because they violated the law. You are not going to enforce that provision against the Central Committee? I guess what you are saying is that you are not going to bring an action to enjoin them or seek any permanent penalties against them?

Mr. Graybill: Your Honor, pursuant to the Eleventh Amendment, the only thing that we are answerable for—

The Court: I want an answer to my question.

Mr. Graybill: The answer that I can give you is that we have not done so in the past. We do not view there being any criminal provisions involved here. Our attitude has been that it is primarily a statute protecting the rights of the individual party members that is available there. Without those provisions the party members themselves would not have a hook.

The Court: That does not answer my question. Are you prepared to tell those members of San Francisco County Democratic Committee that if they endorse candidate X in the primary, and candidate Y comes and complains to you, that you are not going to seek to enjoin them from violation (p. 14) of the law?

Mr. Graybill: You are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is, what our attitude has been.

We have never been involved in the enforcement of those statutes, never. None of the defendants, either from a civil enforcement action with respect to non-partisan endorsement or criminal enforcement, we are not here in a situation, and I don't think that we can bootstrap jurisdiction by asking me to answer a hypothetical question.

The Court: But the law says it is a violation of the law. They are entitled to know, because their First Amendment rights are seriously implicated and presumably because they are involved actively in the political process, they want to obey the law, they want to know if they violate the law, what is going to happen to them.

Mr. Graybill: Your Honor, you might as well ask that question of their fellow party members who unfor-

tunately are not represented before this court, because they can enforce those statutes.

The Court: There may be a lot of them out there waiting to file civil actions.

Mr. Graybill: There may be a lot of irate party members who have been relying on the fact and assumed (p. 15) they will have neutral party organizations with respect to party in-fighting in the primaries, and I would expect that if there are official endorsements of candidates, where there is a significant contest, there will be injunction actions.

What I want the court to understand is that no party has done that throughout the history of the state so far as we can understand. It is so engrained in the policy.

What we are really talking about here is the First Amendment rights of the parties themselves. The parties have defined the role of these Central Cimmittees. These people were not elected to endorse candidates, it is clear from long-standing party policy that is now reflected in state law at the behest of parties, that that is not part of their role.

Their primary role by statute and party tradition is to campaign for the nominees of the party who are elected by the members of the party at the primary election. They don't have standing to raise that issue.

Let's take a moment, I notice that the plaintiffs were indicating that our policy discussion in our brief was not satisfactory, because we did not discuss some of the cases they cited, the *Ripon* case, *Ripon Society Versus The National Republican Party,* in the District

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(p. 46) and *Canton* and all the rest, counsel.

Mr. Graybill: It does get complicated.

If I may, I would like to borrow a metaphor from my distinguished colleague, and that is that *Fahey v. Darigan,* which is relied on pretty heavily in my colleague's remarks, highlights the very humble nature of the claim submitted to this court by the plaintiffs today.

The court in *Fahey* pointed out—and I would initially like to point out—that there you had several members of a party suing another member of the party with respect to their rights and obligations under state law, a classic case of controversy, and one of the things that the court noted there was—and it seemed to make a difference in the way it was approached, that the party chairman who apparently had engineered that statute to give him the power to pack the committees, based on supposedly an implementation of the national party policy, pointed out that there was no evidence that that chairperson had the support of the county committees when he did that.

So there the court found there was absolutely no state interest. The statute applied to a particular central committee of a particular city, no other cities, just that particular city.

There was no evidence that the local party itself had requested that, only that the chairman did, and under (p. 47) those circumstances the attorney general of that state, even at the request of the court, declined to appear, because it was purely a local matter.

The point is very important with respect to what we have here. I have not received the declarations referred

to by my distinguished colleague that supposedly establish that the bylaws of the particular central committees that are purportedly before the court were complied with in authorizing this lawsuit.

That is the same type of situation that was of concern to the court in *Fahey*.

The *Ripon* court also indicated under those circumstances, and I think it is important what the plaintiffs did not do when they were before this court in oral argument or in their papers, they did not really deny that these statutes do not reflect the policies of the party.

We have presented this court with evidence that they do, and under those circumstances there would be no substantial interference with the associational rights and the first amendment rights of the party or its members as members of that party.

The *Ripon* case indicates that very clearly, where you have that kind of dispute, and that is what we have got in this particular case. We have not been able to persuade the state parties to change those policies, and I think (p. 48) if the court—you know, we have indicated that we are developing an extensive factual basis to establish that nexus, I think the court in *Anderson versus Celebreeze* recognizes there is a distinct probability that that is the case.

The plaintiffs here do not refute the factual proposition that these matters reflect the policies of the parties. What they say in their reply brief is that even if it does, they have the first amendment rights as individuals, and they can't assert their rights as party organizations, as

central committees, because those have been defined by the parties themselves over time to be of a limited function.

I notice that the court was concerned about the statute passed in 1963. The plaintiffs have pointed out no incident where a state party or a county central committee has endorsed a candidate prior to that time. The opinion of our office by Justice Friedman issued in 1954 indicated that they did not take place, that there was an inquiry as to whether an amendment as to the statutes governing the power of the central committees authorized that.

It was our view in light of the long-standing policies of the parties themselves and the symbiotic relationship between the direct primary law and the policies of the party, that there was no such authorization in the (p. 49) statute for endorsement, and so far as we know, from the period prior to 1954 up to 1954, there had not been any endorsements.

From the period from 1954 to 1963, there had not been any endorsements, there is no evidence of that at all.

The only reason that that could be is because that is the position of the parties and under those circumstances there is no substantial interference with the rights of the parties where the state statutes themselves track that policy.

Under those circumstances the rational basis test, and that is that the *Socialist Workers Party,* I don't know how we could characterize a decision of the ninth circuit in this area governing the standard of reasoning that must be applied in this case as humble—I generally heard that referred to as controlling.

The Court: Are you suggesting, are you questioning the veracity of the affidavit? The declarations that have been filed in this case as to those who intend to or desire to but for this law endorse?

Mr. Graybill: I have not seen the declarations that have been referred to. I have asked for them, I have asked for the bylaws of the particular committees so that we can analyze what those declarations say as to whether the action taken is proper. And I think that is a fundamental obligation, these plaintiffs are coming before this court (p. 50) asking it for equitable relief. They have to demonstrate that they come to the court with clean hands and that they have done equity themselves.

They are here purporting to represent others in a way that long-standing party policy and state statute indicate that they have no authority to do. That raises a question in and of itself, and I think the people whose interests are not being represented before this court have a right, when plaintiffs come in purporting to represent them, that that underpinning is there.

The court in *Fahey versus Darigan* was sensitive to that. The court in *Ripon* was sensitive to that. We are talking about associational rights of the parties and there is strong indication before this court, and I don't think that in light of the absence of any refutation, really by the plaintiffs, I think that the defendants, if there were jurisdiction in this case, would be entitled to summary judgment, because there is no substantial issue of fact that these policies track the policies of the parties.

The Court: Is there anything further, counsel, because it is getting late and the reporter has been at it for a long time. I will give you five more minutes.

Mr. Graybill: I beg the indulgence of the court.

I also would like to point out to the court that the cases with regard to Article III that have involved (p. 51) facial attacks, have involved statutes that are practically brand new and on their face apply in criminal provisions, and even in that circumstance I would point out that the United States Supreme Court recently in the case of *Babbitt versus The Farm Workers* found that there was not a ripe case or controversy where, as in this case, the relief to be provided or the actions of third parties are implicated, and the interests and the expression of those is in doubt.

You have the ripeness provisions as well as the state case or controversy situation. I think the Supreme Court has indicated in *Simon versus Eastern Kentucky Welfare Rights Organization* and *Warth V. Seldin* and *Babbitt* that it is very important that these issues, where the court's equitable jurisdiction is being invoked, that there be no question that the issues are ripe.

There is a very serious question here as to what the policies are. In fact, the unrefuted circumstances are that these statutes track the policies of the party.

Now, I don't know whether the court has an intended ruling, but if any of the rulings are adverse to the defendants, we would respectfully request that the effectiveness of any of those rulings be stayed for 15 to 20 days, so that we can evaluate just what the nature of the order is and what procedure we should follow at that point.

The Court: With respect to a stay, anticipating (p. 52) that there might be some adverse rulings to the state, do you have any response to that, Mr. Brosnahan, or do you want to wait and see what happens?

Mr. Brosnahan: I would like to, Your Honor. Our concern, of course, is the election and I would just, if Your Honor gets to that point, or whatever Your Honor does have in mind—

The Court: I will give you a tentative ruling as to what I intend to do, at least at this stage.

The Court: I will give you a tentative ruling as to what I intend to do, at least at this stage, and that may be subject to some change.

Then, what I think I will do is issue and order as soon as possible, and that with a decision to follow that will flesh it out, so that because of the time constraints involved those can be recognized.

I am not persuaded by any standing challenge that is made by the defendants that the parties who raised the issues involved here do not have standing. Clearly, it is their very associational rights that they put in issue. And let me dispense with *Pennhurst,* because *Pennhurst* has absolutely nothing to do with this case, at least in its present posture.

Pennhurst has to do with whether or not the court could order a state to comply with its own law. The last thing the plaintiffs want me to do in this case is to order the state to comply with the law. They are alleging that (p. 53) the law is directly in conflict with their First Amendment rights, they are claiming that, and *Pennhurst*

does not stand for that proposition and I trust that the Supreme Court is not going in the near future to hold for the proposition that parties may not come into Federal Court and challenge the actions of a state when they believe they are in conflict with their First Amendment or other federal constitutional rights.

So I will dispel the notion with respect to *Pennhurst* and its application to this case.

The no case or controversy is a little more difficult, admittedly. I think the defendants made far too much that the state embodies the policy of the party, and therefore they can hide behind that, and that the committee cannot challenge the statute, that their quarrel essentially is with the party.

That may well be, but whoever provided the impetus for the laws involved did, in fact, get them on the books and they are statutes such as do provide for criminal penalties, and I note through all of the declarations that have been filed, that while there is a stated intention not to enforce Section 11702 in connection with criminal penalties, on the belief that there are no criminal penalties for 11702, there is no statement that the parties, the defendants, will not enforce 29430, which does provide for criminal penalties, and some of the allegations in this complaint go not only to the endorsements themselves but to the use of those endorsements, and indeed I don't know why the committee would even want to (p. 54) endorse, but 29430 does compel the state to proceed criminally against individuals who violate that section.

I have seen nothing from the various state district attorneys who filed their declarations or affidavits indicating that they would not enforce the provisions of 29430.

I have not finished, counsel, and your chance for argument is over. If I'm wrong, you can take me up on appeal.

With respect to the threat of enforcement, I don't think that you have an *Ullman* situation, where you have a statute that has been on the books for a long time and flagrant violations. You have a statute that is not relatively new but it has been on the books for some time, for which there really is no evidence that since its enactment it has been violated. Therefore, you do not have the test of flagrant violations, and an indication on the part of the state by virtue of its action that it does not intend to enforce.

The state has not indicated that they would not enforce civilly the provisions. I find it curious that the state is so anxious to defend a statute that it has no intention of enforcing, apparently, but that is a decision that perhaps is only curious in observation and has nothing to do with the ruling here.

But indeed if there is an area that I think is unique, an area of political involvement and a climate where disgruntled candidates—to paraphrase Shakespeare—"Hell (p. 55) hath no fury like a disgruntled candidate," are likely to come forward and seek out enforcement. Who knows how many *Ungers* there are, who want to enforce civilly the provisions of the statute.

Indeed, *Unger* sought to enforce a statute contrary to interpretation rendered by the attorney general. Of course, the courts of California to date have held contrary to that opinion as well.

That, coupled together with the infringement upon First Amendment political rights, which are probably the

most precious, and First Amendment associational political rights, which are the most precious in this society, I think together with the fact that the plaintiffs have indicated their fear of violating the statute and the fact that they have not acted in contravention of it for that very fear and the consequences, if they should do that, as politically active individuals, essentially confronting and violating the law, I find that they do not have to do that. That the case of controversy requirements are met under those circumstances and they are met in this case, and therefore they are entitled to challenge the law.

Now, with respect to that, that means that the motion to dismiss to that extent is denied, and I would deal with that aspect of it as well with respect to summary judgment.

(p. 56) The statutes are a clear abridgment of first amendment rights and the state must show a compelling state interest. They have failed to show that. They have even failed to show rational interest. We have essentially one declaration from a member of the legislature, much of the language is speculative, they failed to respond to declarations submitted by the plaintiff in an adequate fashion to justify a rational interest and maintain the statute, and I do point out they are reluctant even to enforce it.

So I am not sure what the compelling interest is, but in any event, even assuming that the arguments they raise are factional, they have not submitted any factual support for a rational basis, let alone a compelling interest in justifying that statute.

I find the same with respect to those aspects of the statute that attempt to regulate how authority operates and runs itself internally insofar as it has to do with the

selection, the length of term, and the dues—those provisions that have to do with where it meets, and when and where the party would like to make the selection itself, I don't find it imposes a substantial burden, at least I have not seen facts to support that. I am not sure why the state should be so concerned about it.

Before I even engage in any inquiry as to those issues, there must be a showing that it does impose a (p. 57) substantial burden upon the associational or first amendment rights, and I find as to those aspects of the statute that has not been met.

Now, a more difficult question comes to the one of abstention, and while abstention is to be carefully eschewed, however live and well, I cannot see a decision coming down from the California Supreme Court that is not going to have some substantial implications upon how this case should be decided, if this court were to wait.

Indeed, I think it may be very likely that the state in that case would resolve issues based upon state law making it unnecessary for this court to reach the constitutional issues, therefore as to the non-partisan elections, I am inclined to abstain from those, and that is likely to be how the order will look when it comes out, hopefully fleshed out with some more reasoning in a memorandum decision or order that will follow, but I will try to get an order out today or tomorrow.

As a matter of fact, Mr. Brosnahan, since you have prevailed for the most part, I know from the volumes of paper I received, that I have no capability to fight back with my one word processor.

Would you prepare an order outlining generally what I have indicated how I am going to rule, and I will sign it as soon as possible and then I will flesh it (p. 58) out with a memorandum decision or opinion.

Mr. Brosnahan: Fine, we will do that.

The Court: Yes.

Mr. Graybill: Your Honor, how will the order read with respect to the stay provisions? These are, with all due respect, statutes and policies that have been in effect and have governed California elections for 80 years.

The Court: But they implicate fundamental constitutional rights, and I would deny a stay, and you may indicate in the order, if you want a stay you can go to the Ninth Circuit for maybe not so humble an opinion as mine.

(Proceedings concluded.)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al., Plaintiffs, v. MARCH FONG EU, Secretary of State of the State of California et al., Defendants.	Case No. C-83-5599-MHP DECLARATIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT Date: April 9, 1984 Time: 10:30 a.m. (Filed March 29, 1984)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF ALBERT S. RODDA, JR.

I, ALBERT S. RODDA, JR., declare as follows:

1. I have been active in the affairs of the California Democratic Party throughout my adult life.

2. From 1958 until 1980 I had been elected and re-elected as the nominee of the Democratic Party to represent Sacramento County in the Senate of the California Legislature. I represented Sacramento County in the State Senate continuously from 1958 through December 1980.

3. I earned a Ph.D. in American History from Stanford University in 1951 and taught economics and California history at Sacramento City College from 1946 to 1967 when I resigned to devote full time to my duties in the State Senate.

4. From 1952 through 1958 I was a member of the Sacramento County Democratic Central Committee and served as chairperson of the Committee during 1956 and 1957.

5. As a member of the State Senate I was, pursuant to the Charter of the California Democratic Party as ratified by statutes of the State of California, a member of the California Democratic Central Committee.

6. During my twenty-two years in the State Senate changes to statutes regarding the structure and procedures

of the major political parties were enacted at the request and with the concurrence of the party affected. The members of the Legislature from one political party acquiesced in and did not attempt to influence legislation sponsored by the members of the other party regarding the affairs of that party. The legislation regarding the affairs of a political party was enacted, therefore, at the request of and with the support of the party affected.

7. The Democratic and Republican parties of California have traditionally supported the California election law which denies the state convention, the state central committee, and the county central committees the authority to endorse candidates seeking the nomination of the party in a primary election. The reason for this support by the parties for the past half century is the determination to guarantee a continuation of the delineation of party responsibilities embodied in the original law which was enacted in 1911 as a result of a political reform movement engaged in by the leaders of both parties.

8. During the time I have been a member of the Democratic Party the role assigned by the party to the convention and the central committees has been that of working for the election of the party's nominees for statewide office, the Legislature and Congress. The central committees, especially the county central committees, must be cohesive and aggressive teams in order to carry out this function.

9. If state and county central committees were allowed to endorse candidates for the party's nomination, my experience in party affairs convinces me that the process of determining an endorsement which is contested,

even if the endorsement is ultimately unanimous through abstentions or otherwise, would produce divisiveness in the committee which would impede its ability to carry out its primary function—that of working for the election of the party's nominee in the November general elections.

10. State and county central committees, by virtue of the fact that they do not participate in primary elections, are able consistently to function as a self-healing mechanism for the party because the credibility of the committee as a neutral has a capability of functioning as a catalyst through which the previously competing factions within the party can cooperate in achieving the election of the party's nominees.

11. There is a possibility also that the divisiveness resulting from central committee involvement in partisan primary elections will weaken the loyalty of elected officials, including members of the Legislature, to their party and generate over a period of time some political momentum to return to the cross-filing type of primary, a practice in California which favored incumbents and weakened the effectiveness of political parties. Such an eventuality would tend to dilute even further the influence of the political parties in the election of partisan officeholders.

12. The dynamics involved in endorsement by central committees of candidates for nonpartisan office are similar. The endorsement process creates divisiveness within a central committee which can adversely affect the committee's ability to campaign effectively for the party's nominees in the November elections, which is the committee's primary function and the justification for its existence. Moreover, successful candidates for nonpartisan offices whose opponents were endorsed by a central committee will, in many cases, carry resentments against the party organization during their political careers which is likely to be contrary to the interests of the party organization.

13. The uniform ban on primary endorsements by state and county central committees effected by state law has been supported by both the California Democratic and Republican parties because it is unquestionably in their interests.

14. The parties have established central committees for the purpose of securing the election to office of the nominees who are selected by party members at the primary elections. Everyone who seeks election to a county central committee and is elected knows that that office is limited in its responsibilities and that that is its function. Democratic and Republican county committee members who seek to expand this role to pre-primary endorsements are undertaking an effort to change dramatically the concept embodied in the primary election law which was originally enacted in this state by a coalition of reform Republicans and Democrats as a means of strengthening the role of the people in the political process and weakening that of organized special interest groups which dominated California politics in the latter part of the 19th century and the first decade of the 20th century. The abandonment of this practice, nonendorsement of nonpartisan candidates and of partisan candidates in primary elections, will create intraparty fragmentation into rival groups and generate serious personal rivalries and factionalism.

15. The wisdom of the ban on endorsements by state and county central committees is borne out by an experience I had as a member of the Sacramento County Democratic Central Committee. In accordance with procedures set out in its bylaws, the committee in early October approved a brochure in the form of a sample ballot for the November general election marking the Democratic Party's nominees for all of the partisan offices on the ballot. Afterwards and without presenting it for consideration by the committee in accordance with the bylaws, the chairperson and a few of his associates added the name of a candidate for the superior court to the brochure and marked the mock ballot demonstrating an endorsement by the committee. Not only did the vast majority of the committee view the endorsement as illegal, as a violation of state party policy and as in violation of the policy and procedures of the committee, but they did not favor the candidate who was endorsed. This incident created so much divisiveness and bad feeling amongst the members of the committee that it could not function in the remainder of the general election campaign. The newspapers gave extensive coverage to the conflict within the committee.

16. Opportunities abound for party members to associate in endorsing candidates for the nomination of the party and for nonpartisan office. I have been active in several such associations which have been very effective. I was an active leader in Sacramento County in bringing into existence the California Democratic Council in the early fifties and in helping create a number of local Democratic Clubs. I also have been a member of the Harry S. Truman Club since its establishment in Sacramento. It supports, on a selective basis, Democratic candidates

seeking the nomination of the party in partisan primary elections and also candidates for nonpartisan elective office who are registered as Democrats.

17. The Democratic Party has among its members persons of all ethnicities and races and of widely varying backgrounds whose interests and views are often conflicting. One of the features of the party which distinguishes it from other political parties and commands the allegiance of its members is its commitment in its own governance to openness and responsiveness to all factions. I have read the first amended complaint of the legal action for which I am submitting this declaration. The statutes which are challenged by the complaint are essential to preventing one faction or another from co-opting official party organizations at the state or local levels. Without the power to endorse candidates for the party's nomination or nonpartisan office, factions have little incentive to try to co-opt central committees and therefore persons interested in doing the "nuts and bolts" work of the party become members of the central committees. When co-option of a party organization by a faction occurs the other factions are often excluded from effective participation in official party organization, become alienated and their allegiance to and confidence in the Party dissipates. The effectiveness of the Party is severely damaged as a result. The statutes regarding party organization and procedure provide some protection against devices used by factions to exclude others from participation in party affairs.

18. My career and experience demonstrate, and I know, that the individual plaintiffs can associate with others to effectively participate in the campaigns of their favored candidates for the party's nomination or for non-

partisan office notwithstanding the bans by statute and party policy of endorsements by official party organizations. Party organizations can and do provide or sponsor workshops for interested potential candidates. There is never any shortage of interested and qualified candidates and the voting members of the party are perfectly capable of discerning which candidate for the nomination or nonpartisan office fit their perception of what a "good" Democrat is.

19. In 1972 I authored Senate Constitutional Amendment 32 which revised article II of the California Constitution relating to suffrage. SCA 32 was passed by the Legislature and signed by the Governor. It was adopted by vote of the people as Proposition 7 on the ballot for the general election in November 1972. A copy of the ballot pamphlet for the November 1972 election as it pertains to Proposition 7 which was distributed by the California Secretary of State to all registered voters is attached hereto as Exhibit A. Also attached hereto as collective Exhibit B are a copy of a letter, with a five-page attachment, from me to all of my colleagues in the Senate explaining SCA 32 and urging its passage, a copy of the report of the Constitution Revision Commission upon which sections 4 and 5 of article II as enacted in 1972 were based and a copy of the report of the Senate Elections and Reapportionment Committee on SCA 32.

20. As is apparent from Exhibits A and B, section 4, relating to primary elections for partisan office did not eliminate any of the power of the Legislature to regulate political parties and the terms and conditions upon which political parties may participate in primary elections. As the Constitution Revision Commission points out in its

analysis, the verbiage of former section 2.5 of article II relating to primary elections was unnecessary because the Legislature notwithstanding section 2.5 of article II had the power to and had enacted a comprehensive scheme of law governing political parties and their participation in primary election which would be unaffected by enactment of section 4. As I explained to my colleagues in the Legislature and the voters in urging them to enact SCA 2 and Proposition 7, section 4, effected no change in the Constitution but merely eliminated excess verbiage.

21. As is apparent from Exhibits A and B, I also explained that section 5 continued the ban of section 2¾ on participation by political parties in elections for judicial, school, county and city offices but merely changed the outdated term "township" to the modern term "city" and eliminated verbiage which was redundant due to existing status governing elections which the Legislature was otherwise empowered to enact.

If called as a witness, I would testify of my personal knowledge as stated above.

Executed at Sacramento, California, on March 23, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Albert S. Rodda, Jr.
ALBERT S. RODDA, JR.

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF GEOFFREY L. GRAYBILL IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984

Time: 10:30 a.m.

I, GEOFFREY L. GRAYBILL, declare as follows:

1. I am an attorney licensed to practice law in the State of California, a member of the bar of this Court, and as a Deputy Attorney General of the State of California am a counsel of record for most of the defendants herein.

2. Appended hereto as Exhibit A is a true and correct copy of a letter dated March 19, 1984, which I wrote and caused to be mailed to plaintiffs' counsel of record on the date of the letter. The letter requests information in the possession or under the control of plaintiffs or their

counsel. The requests for information were, as stated in the letter, read by me over the telephone on March 19, 1984, to Paul Dieseth who represented to me, as he acknowledged each request, that he was writing them down.

3. As is apparent from the defendants' memorandum of points and authorities which is submitted with this declaration, the requests set forth in the letter are designed to illicit information which may constitute evidence or lead to admissible evidence which demonstrates that the views expressed by plaintiffs are contrary to the positions of their respective parties, that plaintiffs knew this prior to bringing this action, that the statutes which they challenge were enacted at the request of and/or with the active support of their parties, whether the plaintiff county central committees and State Central Committee of the Libertarian Party authorized this action to be brought in their names, the scope of the authority of such central committees pursuant to their bylaws and whether a particular faction of factions within have been advocating the relief requested by plaintiffs. All of this information is relevant to the issue of whether the First Amendment rights asserted by plaintiffs are affected by the challenged statutes, whether the relief requested would impair the First Amendment rights of persons not parties to this action but on whose behalf plaintiffs purport to speak and whether plaintiffs have standing to invoke the jurisdiction of this Court.

4. As of the date of this declaration, none of the requested information has been received from plaintiffs or their counsel. Plaintiffs' attorneys, Mr. Chao and Mr. Dieseth, have informed me that they will be objecting to

most of the requests and will not be providing most of the rest of the information within the period allowed for briefing in this case.

5. I have contacted the offices of the Democratic and Republican State Central Committees by telephone requesting information regarding the positions that the Central Committees have taken at any time one the statutes challenged in this litigation and an opportunity to review the agendas and minutes and related documents of the committees and their executive committees. The chairperson of the Democratic State Central Committee, and the Executive Director of the committee were unavailable but I did speak with the political director of the Central Committee, Kris Schwenkmeyer, on or about March 19 or 20, 1984. Ms. Schwenkmeyer informed me that a proposed resolution to join as plaintiffs in this action was presented to the Executive Committee and was rejected. I gave her my address and phone number and requested that she send me a copy of the resolution and the minutes manifesting the disposition of the resolution; she assured me that she would do so. The Democratic State Central Committee conducts its business from its Los Angeles office this year. As of the date of this declaration I have not received a copy of the resolution or the minutes.

6. In the same conversation, I requested an opportunity to review the minutes and agendas and related documents of the Central Committee for information regarding the enactment of the statutes challenged in this litigation and the party's policies regarding the subject matter. Ms. Schenkmeyer told me that she did not know where such documents were kept or whether they exist. Ms. Schwenkmeyer stated that she was not aware of any

action taken by the Central Committee or the Executive Committee requesting repeal or amendment of any of the statutes in question. She stated that she would contact an employee of the central committee who might know and ask her to call me because the person was working part-time so that I could not contact her. I requested that the Executive Director return my call. As of the date of this declaration, I have not heard from anyone representing the Democratic State Central Committee.

7. On or about March 21 or 22, 1984, I contacted the offices of the Republican State Central Committee in Sacramento by telephone and asked to speak to the chairperson or the Executive Director neither of whom was available. I did speak to John Rico, the Political Director, and requested of him the same information requested of Ms. Schwenkmeyer. He informed me that the Chairperson of the State Central Committee had been contacted by some of the plaintiffs in this action and was invited to join as a plaintiff but in what capacity, i.e., as chairperson and/or on behalf of the State Central Committee, was unclear. Mr. Rico informed me that the chairperson refused to join in any capacity. Mr. Rico stated that he was unaware of any action by the State Central Committee or the Executive Committee requesting repeal or amendment of the statutes challenged in this action. He also informed me that the records of the State Central Committee were kept in both Burbank, California, and Sacramento and that he was unaware of just what these records contained.

8. The files of the author of the legislation originally enacted what is now Elections Code section 11702 are not in the State Archives. The legislator is dead and I am informed by former members of his staff that his legislative files are in the possession of his widow in El Monte, Cali-

fornia. Records relating to enactment of section 11702 could demonstrate the involvement of the political parties in enacting that statute.

9. I was assigned to represent defendants after the answers to plaintiffs' requests for discovery were submitted on January 27, 1984. The deputy previously assigned to the case had to take a leave of absence which required reassignment of the case in light of the status conference in this case scheduled for February 27, 1984. I have had to adjust an otherwise full caseload to handle this case. When I was informed by the court on February 27 that all motions had to be filed by March 5, 1984, I had to request extensions of time from other courts on matters pending before them in order to try to accommodate the unexpectedly tight time constraints imposed in this case.

10. Contacting witnesses, researching the law, preparing the documents and memoranda filed in this action within the unusually tight time constraints of this case has not permitted development of evidence as indicated in this memorandum which I am convinced should be in the record of this case to protect defendants' rights on appeal if a judgment is entered against them on any of the causes of action in this action.

If called as a witness I would testify of my own knowledge as stated herein.

Executed at Sacramento, California, on March 26, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

GEOFFREY L. GRAYBILL

March 19, 1984

James J. Brosnahan, Esq.
Morrison & Foerster
One Market Plaza
Spear Street Tower
San Francisco, California 94105

San Francisco County Democratic Central Comm., et al. *v. March Fong Eu*, et al., U.S. District Court for *Northern District of California, No. C 83-5599 MHP*

Dear Mr. Brosnahan:

Pursuant to the instructions of the court and the assurances of cooperation by your co-counsel at the status conference conducted by the court for this action on February 27, 1984, defendants make the following informal requests for discovery due to the usually tight time constraints within which the motions for dismissal and summary judgment now pending before the court were required to have been filed and heard. These requests were transmitted by telephone to your associate Paul Dieseth on March 19, 1984.

1. Minutes or other documentation reflecting the votes of the members of the plaintiff county central committees authorizing the instant litigation and each cause of action thereof. State whether all votes were cast in person at a meeting of the committee and, if not, a detailed description of how such vote was taken.

2. If no such documentation exists, a sworn statement on personal knowledge of how authority to sue was attained from each plaintiff county central committee.

3. Roster with names, home addresses and phone numbers of each member of each plaintiff county central committee.

4. Copies of by-laws and other written statements of procedure and policy of each plaintiff county central committee.

5. Copies of the current constitution, charter, by-laws and rules of the national Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

6. Copies of the current constitution, charter, by-laws and rules of the California Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

7. Copies of any written communications within the past five years from any national or state central committee of the Republican, Democratic and Libertarian parties or officials thereof regarding matters complained of in this litigation in the possession or under the control of any plaintiff.

8. Copies of all written communications within the past five years from all plaintiffs to the national committees, California state central committees and officials thereof of the Democratic, Republican and Libertarian parties regarding matters complained of in this litigation.

9. All of the information and documentation identified in requests 1, 2 and 3 above with respect to the plaintiff state Central Committee of the Libertarian Party of California.

10. All written communications in the past five years received by any plaintiff from organizations or groups or officers or employees thereof or sent by any plaintiff to such entities or persons regarding the issues raised in this litigation.

Defendants request that complete responses to the foregoing requests, with copies of the indicated communications, be provided in writing at the office of the undersigned if at all possible no later than Friday, March 23, 1984. As you pointed out to Judge Patel on March 12, when you opposed defendants' application for an extension of time to properly respond to plaintiffs' motion for summary judgment, plaintiffs and their counsel did not file the complaint in this action until November 17, 1983, and the first amended complaint until on or about Decem-

ber 5, 1983, because the process of preparing plaintiffs' case was time-consuming and laborious. Having taken so much time and care in preparing your case, it is reasonable to assume that the requested information is already in your possession or is readily available.

Unlike plaintiffs, defendants have been under tight time constraints from the beginning of this litigation in responding to the complaint, to plaintiffs' requests for discovery and now to plaintiffs' voluminous motion for summary judgment. Thus, defendants have been deprived of the time necessary to adequately research and understand the context in which the issues of this litigation are raised, to prepare for trial or to prepare a fair record if this matter is determined through summary procedures. Defendants have not been involved in monitoring the activities of the political parties in California because their duties have not included this function. This fact is a basis for defendants' motion to dismiss. This fact also makes defendants dependent on the knowledge and records of persons outside of government to adequately defend against the issues raised by the complaint if, as appears to be a *fait accompli*, defendants are required to respond on the merits.

Defendants' counsel have devoted and are continuing to devote intensive efforts to the laborious and time-consuming process of identifying the persons outside of government who have the necessary knowledge and who are willing to provide information without the compulsion of judicial process which the court has acknowledged is not a practical alternative given the time-constraints involved in this litigation. The leads and information which defendants' counsel have acquired to date, though tentative and preliminary, indicate that the views expressed by plaintiffs are not representative of most members of their parties, are contrary to the actual positions of their parties and are deleterious to the interests of their parties.

This information if adequately developed and validated would have profound adverse effects both on plaintiffs'

standing to litigate any of the issues raised by the complaint and on plaintiffs' positions on the merits of these issues.

Inasmuch as the court has made a point of informing defendants that they have no assurance that they will have an opportunity to present evidence for introduction into the record of this litigation after final briefing of the pending motions are filed by mail on April 2, 1984, your timely response to defendants' request is of critical importance. Defendants have endeavored to get the information of the nature requested of you themselves but so far have been unable to secure almost all of it. Obviously, these requests are of necessity of a preliminary nature and in order for defendants to prepare a fair record in this litigation, much follow-up would be required.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Geoffrey L. Graybill
Deputy Attorney General

GLG/lac

cc: Honorable Marilyn Hall Patel, Judge
U.S. District Court

Clerk, U.S. District Court for
the Northern District of California

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF JAMES FAY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, JAMES FAY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a resident of Alameda County, California and was, from 1972 to 1976, an elected member of the Alameda County Democratic Central Committee. I am a registered Democrat and have been an active participant in the activities of the Democratic Party of California since 1971. In 1976, I was the Northern California manager of the Presidential campaign of Congressman Morris Udall. I am also a Professor of Political Science at California State University in Hayward.

2. I withdrew from the Alameda County Democratic Central Committee because, among other things, that Committee was prohibited by law from expressing my views, the views of my fellow Committee members, or the views of other party adherents regarding various candidates for partisan office in primary elections. I have been discouraged from seeking to rejoin the County Central Committee because, among other things, that Committee is prohibited by law from expressing its views regarding candidates for school, county, or city office.

3. As a voter and concerned citizen, when I evaluate candidates running for partisan office in primary elections or for school, county or city elections, I would like to know whether my County Central Committee would endorse, support, or oppose such candidates. Such an endorsement would tell me, as a Democrat, that the party finds that candidate best qualified and most representative of the Democratic Party's philosophy. Although the endorsement would not dictate how I ultimately vote, it would provide another helpful piece of information for me to evaluate when I go to the polls.

4. I would, therefore, like the Alameda County Democratic Central Committee to have the ability to endorse, support, or oppose candidates in primary and school, county, and city elections. I would encourage or contribute to this endorsement process if that process were permitted by law.

5. As an active political participant and a concerned voter, I am also distressed that the Democratic State Central Committee is unable to endorse candidates in statewide primary elections and is thus severely restricted

in its ability to vigorously engage in the political life of the state. Throughout our democratic nation and in many of our sister states, the primary function of political parties is to select nominees for office or to advise the public on candidate selection.

6. In California, I personally can and have considered the endorsements of business, labor, environmental, civic, social, and special interest groups before deciding who to support for statewide partisan office. However, I am deprived of the advice of the official voice of the Democratic Party in every statewide primary. Since many members of the Democratic State Central Committee have the opportunity personally to speak with and closely evaluate candidates for statewide office, an opportunity which I rarely have, I would appreciate their public evaluation, in the form of an endorsement, as one important piece of information in helping me to make a rational choice on how to vote in the primary.

7. It seems inconsistent for so many groups to be able to endorse candidates for statewide partisan office, including some organizations which pretend to speak for the Democratic Party, while the Party itself has no public voice to communicate with the citizenry regarding which individuals will assume crucial leadership roles in the Party, speak for the Party, help shape its policies, and lead it in the electoral struggle in the general election.

8. As an active member of the Democratic Party, I would like my party freed from the restrictions regulating its organizational structure as set forth in the Complaint in this case. A party should be free to conduct and arrange its internal affairs as it sees fit, without interference from the state.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Berkeley, California, this 2nd day of March, 1984.

/s/ James S. Fay
JAMES FAY

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF DONALD FRASER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, DONALD FRASER, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am currently the Mayor of Minneapolis, Minnesota. I was elected to this office in 1980. Prior to that time, I represented Minnesota's 5th District in the United States House of Representatives from 1963 to 1978 and served as a member of the Minnesota Senate from 1954 to 1962. While in Congress, I was a member of the House International Relations Committee and the House Budget Committee. I have long been active

in Minnesota and national politics, serving as a Minnesota delegate to the Democratic National Convention in 1960, as the chairman of Minnesota Citizens for Kennedy in 1960, as a member of the Democratic National Convention Rules Committee in 1972 and 1976, as the national chairman of Americans for Democratic Action from 1973 to 1976, and as the national chairman of the Democratic Conference from 1976 to the present.

2. I am a member of the Minnesota Democratic-Farmer-Labor Party (DFL). The DFL structures itself as follows. The party holds local precinct caucuses, approximately 3000 of them, on the same date throughout the state. Approximately 60,000 to 100,000 people regularly participate in these precinct caucuses. Each precinct caucus elects delegates to the next tier of party government. In the rural areas, the next tier is a county convention. In urban areas, the next tier is the state senatorial district. Delegates to this second tier meet three or four weeks after the precinct caucuses, and elect delegates to the state convention.

3. Party endorsements serve an educational function. Party activists have access to information about the candidates which should be communicated to the public. Party conventions are able to consider the positions of the candidates on the issues carefully and thoughtfully and are able to assess the quality of their character. Endorsements allow the party to advise the voters, who normally lack the time and resources to make such detailed evaluations, how candidates fare against each other when these factors are weighed and considered.

4. Primary endorsements allow those who would otherwise not be serious contenders to be considered for

public office. They enable candidates who are not wealthy or who are not well known to be recognized and recruited for public office.

5. Party endorsements also allow the parties to hold elective officials accountable to the voters. The party organizations monitor the elected officials and ensure that they address the needs of the voters and the members of the political party that supported them.

6. The DFL state convention has regularly endorsed candidates running in the state's primaries since the party's inception shortly after World War II, including candidates seeking the offices of United States Senator, Governor, Attorney General, State Treasurer, and State Auditor. On the local level, the second tier conventions regularly endorse candidates running for the State Legislature and for the United States House of Representatives.

7. The ability of parties to endorse primary candidates in Minnesota has enabled the parties to serve all these functions. Because of the endorsement process, Minnesota consistently presents to the voters a high quality of candidates at both the state and the national level.

8. In Minnesota, the parties are also allowed to endorse in nonpartisan elections. Both the DFL and the Republican Party regularly endorse in these races.

9. Endorsements in nonpartisan races are even more important than endorsements in primary races. Officials running in local races are frequently less well known than officials running in the partisan campaigns. The guidance of the party and the information that the endorse-

ment provides is thus far more important in ensuring an informed choice by the voters.

10. Voters do not blindly follow party endorsements. In 1982, for example, the gubernatorial endorsees of both the Republican and DFL parties lost in the primaries. Rudy Perpich defeated the DFL endorsed candidate, Warren Spannaus, and Wheelock Whitney beat the Republican endorsee, Lou Wangberg. As a further example, I was endorsed by the DFL for the United States Senate race in 1978, but lost to Bob Short in the primary. Thus, a party endorsement does not ensure the endorsee will win in the primary election.

11. The state has no business regulating the internal affairs of the party. When the state interferes, it impairs the ability of the party to function and hampers its ability to serve the needs of party members. Several years ago, for example, the state of Minnesota imposed upon the parties a primary system for the selection of delegates to the national conventions. The DFL and Republican parties found this process distasteful since it impaired the parties' ability to select convention delegates in the manner they thought best. The primary law was later repealed, returning us to the caucus and convention system that we presently use.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Minneapolis, Minnesota, this 1 day of March, 1984.

/s/ Mayor Donald Fraser
MAYOR DONALD FRASER

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MARY GINGELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MARY GINGELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984. I have been an active participant in the activities of the Libertarian Party of California since June 1981.

3. The organizations of the Libertarian Party have endorsed candidates running for school, county, or city offices in the past, including candidates running for Mayor of San Francisco, Mayor of Los Angeles, San Francisco County Board of Supervisors, Santa Cruz County Board of Supervisors, Palo Alto School Board, and Santa Barbara School Board.

4. The ability of the Libertarian Party organization to endorse candidates is crucial. Ours is a small relatively young party. We must be free to recruit and train strong, capable candidates in primary races if we are to develop as a party. Only by being free to support primary candidates for partisan office can we hope to accomplish this objective. In school, county, and city elections, it is important for our voice to be heard, as our opinions are not being expressed by other unofficial organizations. If we are silenced, then the electorate is deprived of the Libertarian point of view.

5. The Libertarian Party of California was not formed until 1972. In 1980 we became a qualified party, governed by the provisions of the California Elections Code and entitled to participate in primary elections. Before 1980, our party had organized itself by regions, not counties. When we became a qualified party, however, we were forced by the provisions of the Elections Code to change our structure and our internal party rules, including a change to an organization based on counties. These provisions stated that we had to abide by the detailed statutory provisions governing the Republican Party, the Democratic Party, the American Independent Party, or the Peace and Freedom Party, all of which have goals and

concerns different from those of the Libertarian Party. Although we selected the rules of the Peace and Freedom Party as the best alternative, we were still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure.

6. The Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs so that we would not have to operate under the burdensome rules governing the Peace and Freedom Party. In 1981, a bill that would have accomplished that goal was introduced by Assemblyman Robert Naylor. The Assembly Elections Committee considered this bill, but did not pass it, illustrating the danger of leaving internal affairs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Costa Mesa, California, this 29 day of February, 1984.

/s/ Mary T. Gingell
MARY GINGELL

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MILLER HUDSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MILLER HUDSON, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Denver Democratic Party. I was elected to this post in March 1983. Prior to becoming Chair, I served two terms in the Colorado State Legislature from 1979 to 1983. I have been active in the Democratic Party of Colorado since 1973.

2. In Colorado, the lowest organizational level of the Democratic Party is the precinct caucus, which is structured so that there are approximately 500 voters per precinct. The precinct caucuses meet and elect the representatives that attend the county assemblies. The county assemblies then meet and elect the approximately 3000 delegates to the state convention.

3. In Denver, all municipal officials are elected on a nonpartisan ballot that does not indicate the candidate's party affiliation. In 1983, the Denver Democratic Central Committee decided to support candidates in the race for the two contested nonpartisan posts on the Denver Election Commission. The party thus held a convention at which the delegates conducted a preference poll. The two top vote getters received the support of the party. The Denver Democratic Party held a similar convention and conducted a similar preference poll in the 1975 election for city council.

4. Both the county and state conventions regularly consider and vote on all the candiadtes running in primary races. Votes are thus taken in regard to the entire range of state attorney general, and county commissioners. At the conventions, a single ballot is taken for each such office. Candidates who receive over 20 percent on this ballot are automatically listed on the primary ballot in the order they placed in the convention voting. Other candidates have access to the ballot only by petition.

5. The ability of the party to express its support for candidates contributes to the strength of the Democratic Party in Colorado. The party would be much weaker if

it were not allowed to express its preference for the candidates.

6. Because the candidates realize that support from the party is helpful, the party is able to fulfill its function of holding elected officials accountable to the people.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Denver, Colorado, this 27th day of February 27, 1984.

/s/ Miller Hudson

State of Colorado
County of Arapahoe
The foregoing instrument was acknowledged before me this 27th day of February, 1984 by Miller Hudson.
My commisison expires: 4/4/84

/s/ Carol A. Wyatt
Notary Public

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MALCOLM E. JEWELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MALCOLM E. JEWELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a Professor of Political Science at the University of Kentucky. I have taught at the University of Kentucky since 1958, and chaired the Political Science department from 1969 to 1973. My primary teaching fields are American political parties at the national and state level; and the legislative process at the national, state, and cross-national level.

2. I received my Bachelor of Arts degree in Political Science, *magna cum laude* from Harvard University in 1949, my Master of Arts degree in Political Scicence from Columbia University in 1950, and my Ph.D. degree in Political Science from Pennsylvania State University in 1958.

3. I have held the position of President Elect and President of the Midwest Political Science Association (1978-80), President Elect and President of the Southern Political Science Assocation (1979-81) Chairman of the American Political Science Association's Committee of Department Chairman (1971-73), and member of the American Political Science Association's Council and Administrative Committee (1979-81).

4. I am and have been an editor of the Legislative Studies Quarterly, a journal I helped establish, since 1976. I have authored several books, including AMERICAN STATE POLITICAL PARTIES AND ELECTIONS (1978) with co-author Professor David Olson, and have contributed chapters to other works, including *The Selection Process and the Presidency,* in THE POST-IMPERIAL PRESIDENCY (V. David ed. 1980) and *Participation in Southern Primaries* in PARTY POLITICS IN THE SOUTH (R. Steed, L. Moreland, T. Baker eds. 1980). In addition, I have published a number of articles concerning state party systems, including *The 1978 Elections and American State Party Systems,* Publius 191 (Winter 1979); *Voting Turnout in State Gubernatorial Primaries,* 30 Western Political Quarterly 236 (June 1977); and *Local Systems of Representation: Political Consequences and Judicial Choices,* 36 George Washington Law Review 790 (1968).

5. A true and correct copy of my complete curriculum vitae is appended to this declaration as Exhibit A.

6. I am currently preparing to publish a new book, entitled PARTIES AND PRIMARIES: NOMINATING STATE GOVERNORS, the research for which underlies the factual material set forth in this declaration. My research focused on the party endorsement and selection of candidates for governor.

7. In seven of the states I examined while doing research for my new book, a gubernatorial candidate's access to the primary ballot is conditioned, in varying degrees and pursuant to state law, upon official party support or endorsement at the state convention. These states and their provisions follow:

a. Utah: If a candidate receives over 70% on a convention ballot, that candidate will become the party's nominee, and no primary will be held. If no candidate receives over 70%, the top two vote getters will vie for the party's nomination in the primary. No other candidates may qualify for the primary ballot.

b. Connecticut: The party endorsee will automatically become the party's nominee in the general election unless another candidate receives over 20% of the vote on any convention ballot. If some one receives over 20%, he or she has the option to request that a primary be held, allowing that individual to challenge the party endorsee.

c. Rhode Island: The party endorsee qualifies for the primary ballot and is listed first. Other candidates must qualify by petition.

d. North Dakota: The party endorsee qualifies for the primary ballot. Other candidates must qualify by petition.

e. New York: Candidates other than the endorsee qualify for the primary ballot by getting 25% on any ballot at the state convention, or by petition.

f. Colorado: Candidates qualify for the primary ballot by getting 20% on the single ballot taken at the state convention, or by petition. The candidates are listed on the primary ballot in the order they placed at the convention.

g. New Mexico: Candidates qualify for the primary ballot by getting 20% on the single ballot taken at the state convention, or by petition. Candidates may qualify by petition only if they have sought endorsement at the state convention.

8. In Massachusetts, the charter of the state Democratic Party provides that only gubernatorial candidates who get 15% of the vote on any ballot at the state convention qualify for the primary ballot.

9. State political parties also endorse candidates in other states, such as Minnesota, Illinois, Delaware, and Wisconsin.

10. I studied in detail the 1982 gubernatorial endorsement process in five states: Connecticut, New Mexico, New York, Massachusetts, and Minnesota. I examined ten state conventions and ten primary contests, one for each of the two major parties in the five states. I found that four of the ten endorsees lost the primary election and that four

other endorsees benefitted little from the party endorsements.

11. In the 1982 New York Democratic gubernatorial contest, Mayor Edward Koch of New York won his party's endorsement, but lost the primary to Mario Cuomo. This was the second time in the last four Democratic gubernatorial contests that the endorsee had lost the primary.

12. In the 1982 Massachusetts Republican gubernatorial contest, John Lakian won his party's endorsement but lost in the primary election. This was the second consecutive gubernatorial contest in which the endorsee had lost the Republican Party primary.

13. In both Minnesota 1982 gubernatorial primaries, the parties' endorsees, Warren Spannaus and Lou Wangberg, lost in the primary elections.

14. Little evidence suggests that the party's endorsement significantly contributed to the victories of the Democratic or Republican gubernatorial endorsees in the 1982 New Mexico primaries. A statewide survey of registered voters was taken by Professor F. Chris Garcia a few weeks before the primaries. At my request, Professor Garcia included in that survey a question asking the respondents which candidate they expected to vote for and the reasons for that choice. Not a single voter in either party mentioned the party's endorsement as a reason for their candidate preference.

15. In the 1982 Massachusetts Democratic gubernatorial contest, Michael Dukakis won both the endorsement and the primary over the incumbent governor, Edward King. In a survey that I conducted ten days following the primary, 92% of those who knew that one of the two

candidates had received the Democratic Party's endorsement said that the endorsement had made no difference in the way they had voted.

16. In the 1982 New York Republican gubernatorial contest, Lewis Lehrman won both the endorsement and the primary. The endorsement, however, was not an important factor in his primary victory. The endorsement merely reflected the party's belief that he was going to win the primary.

17. In my opinion, based upon my knowledge and experience, and upon my study of state endorsement practices, no evidence supports the hypothesis that party endorsements have an undue or dangerous impact on the voter. Voters can and do exercise their independent judgment in casting their ballots.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Lexington, Kentucky, this 27th day of February, 1984.

/s/ Malcolm E. Jewell
PROFESSOR MALCOLM E. JEWELL

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

N. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF EUGENE LEE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, EUGENE LEE, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am presently a Professor of Political Science and the Director of the Institute of Governmental Studies at the University of California, Berkeley. I have taught at the University of California, Berkeley, since 1955. My primary teaching field is state and local government and politics.

2. I received my Bachelor of Arts degree in political science from the University of California, Los Angeles in 1946, and my Master of Arts degree and Ph.D. in political science from the University of California, Berkeley in 1950 and 1958, respectively.

3. I was the Academic Assistant to the President of the University from 1973 to 1976 and a Vice President/ Executive Assistant at the University from 1965 to 1967.

4. I served as President of the Northern California Political Science Association from 1965 to 1966. I am currently a member of the National Academy of Public Administration and a member of the Board of Trustees for the California Tax Foundation, having assumed both positions in 1980. I also served as a staff consultant to the California Congressional Delegation in 1979. I am a member of the Board of Directors for the California Center for Research & Education in Government (publishers of the California Journal) and chaired that Board from 1972 to 1982.

6. I have published numerous books and monographs in my field, including THE POLITICS OF NON-PARTISANSHIP: A STUDY OF CALIFORNIA CITY ELECTIONS (1960); CALIFORNIA VOTES: AN ANALYSIS OF REGISTRATION AND VOTING, 1928 60 (1963); CALIFORNIA VOTES, 1962-1972 (1974) with co-author Bruce Keith; THE CHALLENGE OF CALIFORNIA (1st ed. edited with Willis Hawley, 1970) (2d ed. edited with Larry L. Berg, 1976). I have also authored numerous articles, including *California Primary Politics,* California Data Brief (May 1978); *San Francisco's District Election System Alters Electoral Politics,* National Civic Review (April 1978); *Voting Turnout in American Cities,* American Political Science Review (Sept. 1968); and four articles reviewing the California elections of 1960, 1962, 1964, and 1966, published in Western Political Quarterly and Public Affairs Report.

7. A true and correct copy of my complete biographical statement is appended to this declaration as Exhibit A.

8. Political party organizations serve many essential functions in our democracy. For example, they develop and advance political programs and ideas. They play a key role in educating the citizenry as to the issues and candidates of the day and in promoting and facilitating participation at the polls. They recruit and train candidates for public office. They provide funding and manpower for campaigns. And they are one of the few organizations designed to hold elected officials accountable for their acts.

9. A political party unable to endorse candidates is, by definition, a weak party. Indeed, influencing if not controlling the choice of candidates who carry the party label is frequently cited as one of the defining characteristics of a political party. Prohibiting party endorsements, therefore, strikes at the very heart of the political party organizations making it less able to carry out the functions, described above, that only it can perform.

10. California political parties are weak organizations. One of the primary reasons for their weakness is the inability of the party organization to endorse candidates for political office. If given the power to endorse, they would be better able to carry out the vital functions noted above. This does not mean, however, that they would dominate the electoral process. Merely allowing official party committees to voice their opinions or publicize their political judgments is not the same thing as giving party organizations control over a candidate's access to the ballot.

11. The endorsement of a political party organization is quite valuable in and of itself. Such an endorsement

provides to the voters one more vital piece of information that the voter can evaluate in making a selection at the polls. In essence, an endorsement serves an educational function, indicating to the voter that like-minded people find the candidate acceptable. The endorsement of the party is particularly useful since it reflects the opinions of the person most active and most interested in the programs and activities of the political party. A voter who identifies with the beliefs of this party and is interested in the health of the organization and the strength of its programs will be best served if he or she knows the opinions of the party leadership as to a particular candidate. In that sense, a political party endorsement is far more valuable and provides far more information to the voter than the endorsement of any individual or single issue group.

12. An endorsement of a party organization will, of course, be only one of many endorsements made by, among others, newspapers, political action committees, political clubs, labor unions, candidate campaign committees, single issue groups, and even friends and neighbors. It is anomalous to allow endorsements by such groups while prohibiting endorsements by those most interested in the health and well being of the party and in its success at the general election.

13. In my study of party endorsement practices, I found that in many cases, party organizations will not endorse any candidate. In other cases, they will endorse several candidates competing for a contested position.

14. Party endorsements will not automatically determine the outcome of an election. A political party organization will merely be adding its one voice to the many other voices that are already exercising their constitu-

tional freedoms. In fact, I am aware of no evidence that suggests that endorsements issued by California political parties prior to 1980 had any negative impact on the electoral process.

15. A party endorsement is not the same thing as a party nomination. Candidates are nominated to primary and nonpartisan ballots by petition. An endorsement by a party would not change that system. Rather, an endorsement would merely reflect the opinion of the party leadership, an opinion to be considered and evaluated by the voter and to which voters are entitled.

16. In terms of the definition used by political scientists, it is not the case that party endorsements will turn a "nonpartisan" contest into a "partisan" contest. The operational definition of a partisan election is one in which a candidate's party affiliation appears on the ballot. This, of course, would not be the case if parties were merely allowed to issue endorsements.

17. I am aware of no evidence that suggests that giving political parties the right to endorse candidates for school, county, or city offices will subvert the will of the party membership. Indeed, the educational nature of endorsements will allow party members to express their will more intelligently when they cast their ballots.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Berkeley, California, this 28th day of February, 1984.

/s/ Eugene C. Lee
PROFESSOR EUGENE LEE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF KAREN MARCHIORO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, KAREN MARCHIORO, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am the current Chairperson of the Democratic Party of Washington. I was elected Chair in 1981. From 1974 to 1981 I was Chairperson of the King County Democratic Central Committee. King county is the most populous county in the state, encompassing the city of Seattle. For the three years before 1974, I had held other local party offices.

2. The Democratic Party of Washington is organized as follows: the Democratic State Convention is the governing body of the party. It delegates the authority to conduct the business of the party to two State Committees —the State Statutory Committee and the State Central Committee. The Statutory Commitee is given only the four powers enumerated in the Washington statutes: calling conventions, providing for the election of delegates to the national convention, filling vacancies on the state and federal tickets, and providing for the nomination of presidential electors. The State Central Committee, pursuant to the Supreme Court case of *Marchioro v. Chaney*, 442 U.S. 191 (1979) in which I was a plaintiff, has been given all other powers. This Central Committee consists of two individuals from each county and two individuals from each legislative district. The County Central Committees and Legislative District Committees, the lowest organizational levels of the party, are elected by Washington voters at the general election on a precinct by precinct basis.

3. The King County Central Committee has endorsed primary candidates. Candidates who have received these endorsements include candidates for the offices of United States Senate and House of Representatives, Governor, State Legislature, and County Council. The King County Central Committee and other County Central Committees, however, frequently refrain from endorsing these candidates to avoid creating unnecessary friction within the party.

4. The King County Central Commitee and other County Central Committees regularly endorse candidates

for nonpartisan office, including candidates for mayor, city council, and freeholder (elected to amend and adopt city charters). Typically, in early August or late July the party will send a questionnaire and an invitation to be interviewed to all the candidates running for selected nonpartisan offices. After carefully evaluating the returned questionnaires and the interviews, the party issues its endorsement.

5. Party endorsements in Washington serve an educational function. In many elections, particularly in local nonpartisan elections, voters are not very familiar with the candidates running for office. The endorsement of their party is thus another valuable piece of information which voters can weigh in their minds when they cast their ballots.

6. It is crucial that a party be allowed the right to structure itself as it wishes. To protect that constitutional right, other party members of the Democratic Party of Washington and I brought suit to invalidate a statute prescribing the composition of our party's State Central Committee. The challenged statute provided that this Committee consist of two representatives from each county. The party and the plaintiffs felt that the Committee would best represent the members of the Party if it also included one representative from each state legislative district. Pursuant to the decision in *Marchioro v. Chaney*, 442 U.S. 191 (1979), the Party was given the freedom to establish another party committee, composed as the party desired, to handle all internal party affairs. The Party formed this committee, a result which satisfied the important need of the Party to have representation from the legislative district level in its central policy-making body.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Seattle, Washington, this 28th day of February, 1984.

/s/ Karen Marchioro
KAREN MARCHIORO

SUBSCRIBED AND SWORN TO before me this 28th day of February, 1984.

/s/ Carey J. Richmond
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF AUSTIN RANNEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, AUSTIN RANNEY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am currently a Professorial Lecturer at Georgetown University, Resident Scholar at the American Enterprise Institute for Public Policy Research, and a Co-Director of the Program In Political and Social Processes, also at the American Enterprise Institute for Public Policy Research. In my professional career, I have held the following academic positions: Instructor in Political Science, Yale University (1945-47); Instructor of Political Science, University of Illinois (1947-51); Assis-

tant Professor of Political Science, University of Illinois (1951-57); Associate Professor of Political Science, University of Illinois (1957-59); Professor of Political Science, University of Illinois (1959-63); Associate Dean of the Graduate College, University of Illinois (1958-61); Professor of Political Science, University of Wisconsin-Madison (1963-76); and visiting Professor of Political Science, University of California, Berkeley (1975-76). My area of professional expertise is political parties and elections.

2. I received my Bachelor of Science degree in Political Science from Northwestern University in 1941, my Master of Arts degree in Political Science from the University of Oregon in 1943, and my Ph.D degree in Political Science from Yale University in 1948.

3. I have been active in professional associations within my field. I served as President of the American Political Science Association (1974-75); Member of the Council, American Political Science Association (1956-58, 1964-71); Member of the Executive Committee, American Political Science Association (1974-75); Member of the of the Task Force on the Future of the American Political Science Association (1977-80); Member of the Council, International Political Science Association (1967-73); Fellow of the American Academy of Arts and Sciences (1964-present); and Vice President for the Social Arts and Sciences (1981-present).

4. I was managing editor of the *American Political Science Review* (1965-71). I have authored several books, including THE DOCTRINE OF RESPONSIBLE PARTY GOVERNMENT (1954, 1962); DEMOCRACY IN THE

AMERICAN PARTY SYSTEM (1974) with co-author Willmoore Kenedal; GOVERNING: AN INTRODUCTION TO POLITICAL SCIENCE (1971, 1975, 1982); and CURING THE MISCHIEFS OF FACTION: PARTY REFORM IN AMERICA (1975). In addition, I have published numerous articles in various professional journals, including *American Political Science Review American Politics Quarterly, Journal of Politics, Political Scence Quarterly, Public Opinion, Revue Francaise De Science Politique,* and the *Yale Review.*

5. A true and correct copy of my complete curriculum vitae is appended to this declaration as Exhibit A.

6. Parties are an essential element of a strong democracy. The need for political parties is evidenced by their existence in every democracy in the world. A political party is the only organization large enough, open enough, and public enough to give order and direction to a democracy's political life.

7. Only strong political parties are able to hold the government accountable to the people. The parties are thus an essential link between the citizenry and elected officials.

8. Political parties provide programatic and ideological leadership to party members and to other voters. They are one of the few organizations that can advance broad proposals for change and formulate specific programs to implement these proposals.

9. Without the ability to endorse candidates, parties are weakened and become unable to carry out their vital functions. They become powerless entities, incapable of

holding public officials accountable to the citizenry or to the party platform they are pledged to support.

10. In almost every other democratic country, such as Great Britain, Canda, Switzerland and France, parties serve the vital functions enumerated above. In the United States, excessive state regulation has hindered political parties in their attempt to serve those important functions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Washington, D.C. this 28th day of February, 1984.

/s/ Austin Ranney
Professor Austin Ranney

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF DAVID E. STURROCK IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, DAVID E. STURROCK, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of both the Santa Clara County Republican Central Committee (the "County Central Committee") and the Republican State Central Committee. I have been either a member or an alternate of the County Central Committee since 1977 and have been a member or associate member of the State Central Committee since 1975. I am a registered Republican and have been an active participant in the activities of the Republican Party of California since 1974.

2. I would like the County Central Committee to be able to endorse, support, or oppose candidates in direct party primary elections, including candidates running for United States House of Representatives, State Senate, and State Assembly in 1984 and 1986. I would also like the State Central Committee to be able to endorse, support or oppose candidates in direct party primary elections, including candidates running for Governor, Lieutenant Governor, Treasurer, Controller, Secretary of State, and Attorney General. I would encourage and contribute to this endorsement process if that process were not prohibited by the existence of section 11702 of the Elections Code and the threat of enforcement of this provision by the defendants.

3. I would also like the County Central Committee to endorse, support, or oppose candidates for school, county, and city offices, including candidates running for the County Board of Supervisors, city councils and school boards in 1984, 1985, and 1986, and for the County Board of Supervisors in 1984 and 1986, and would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. I would have favored the County Central Committee endorsing primary candidates for nomination in past State Assembly races. I would also have favored the State Central Committee endorsing primary candidates for nominaiton in the 1978 State Controller race, and the 1982 State Treasurer and State Controller contests. Dixon

Arnett was a candidate in the 1978 State Controller primary election. Of all the candidates running for nomination that year, I believed that Mr. Arnett would have been the strongest opponent of the incumbent, Kenneth Cory. Another candidate, however, won the election, largely on the basis of an endorsement from Howard Jarvis. The State Central Committee, in contrast, could not endorse Mr. Arnett, and thus was unable to support the candidate that I believed would have been the best for the Republican Party.

5. As for school, county, and city elections, our County Central Committee endorsed candidates for County Board of Supervisors, Cupertino City Council, and Saratoga City Council in 1976, candidates for Mayor of Santa Clara and Santa Clara City Council in 1977, candidates for County Assessor and County Sheriff in 1978, and candidates for Mayor of Sunnyvale and Sunnyvale City Council in 1979, among other races throughout this period. In addition, I would have liked the County Central Committee to endorse candidates for Board of Supervisors and San Jose City Council in 1982. I would also like the County Central Committee to endorse candidates running for San Jose City Council and County Board of Supervisors in the upcoming June election.

6. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Santa Clara County. These groups include (a) Republican Clubs, such as the local chapters of the California Republican Assembly, the California Republican League, the United Republicans of California, and the California College Republicans; (b) labor groups and unions, such as the

Building and Construction Trade Union, the California Teachers Association, the United Farm Workers, the AFL-CIO, and the California State Employees Association; (c) special interest groups, such as the San Jose Real Estate Board, the National Women's Political Caucus, the Police Officers Research Association of California, the Gun Owners of California, and the Law and Order Campaign Committee; and (d) newspapers such as the San Jose Mercury News and the Peninsula Times Tribune.

7. In many school, county, and city elections, the race is between candidates whom interested voters could easily identify as Republican or Democrat. The San Jose Mercury News, for example, regularly lists and offers fairly detailed information about most candidates for nonpartisan office. In these articles, the newspaper indicates the candidates' party affiliation.

8. I became a member of the County Central Committee and the State Central Committee because I shared the political beliefs of the other members of those organizations. I thought that these Committees could advance these shared political beliefs far more effectively than I could as a single individual. My individual endorsement is worth far less than the collective endorsement of the Committees as whole. Since the Committees cannot endorse in primary or nonpartisan campaigns, our whole purpose in associating together has been frustrated.

9. As a member of the County Central Committee and the State Central Committee, I would favor the adoption of a method of selecting State Central Committee members that is different from the method imposed by sections 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164 of

the Elections Code. Currently, about three-fourths of the approximately 1200 members of the State Central Committee are individual nominees for partisan office (including individuals who lost in the general election) or their appointees. The remaining members are made up of the County Central Committees' chairs and their appointees. The minimal role of the County Central Committees under this state-imposed structure is disproportionate to their importance within the Party. Nominees, particularly losing nominees, are individuals who come and go. In contrast, the County Central Committees are ongoing organizations composed of the elected representatives of the Party membership. I would favor the adoption of rules that would give broader representation to the County Central Committees on the State Central Committee.

10. By regulating the organizational structure of this Party, the State is making an unreasonable and unwarranted intrusion into the Party's internal affairs. I would favor the Party being free to modify as it sees fit the rules regulating the time and place of its official Committee meetings, including those rules contained in section 9210 of the Elections Code and also those contained in sections 9420 and 9421 of the Elections Code. We should be allowed to meet in the place and at the time that we deem best suited for our situation.

11. Finally, I would favor giving the State Central Committee freedom to set its own dues. To my knowledge, no other private organization, such as the AFL-CIO is told what dues it can levy.

12. Neither I, nor the County Central Committee, nor the State Central Committee has sought to disobey the

rules mentioned in paragraphs 9 to 11 because of their existence and the threat of their enforcement by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Jose, California, this 29th day of February, 1984.

/s/ David E. Sturrock
DAVID E. STURROCK

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
HUGH BONE IN SUPPORT
OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, HUGH BONE, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. From 1948 to 1979 I was a Professor of Political Science at the University of Washington. I was Chair of the Political Science Department from 1959 to 1968. Since 1979, I have been a Professor Emeritus at the University of Washington. Prior to joining the faculty at the University of Washington, I was an Instructor and Assistant Professor at the University of Maryland from 1937 to 1942, an Assistant Professor at

Queens College, New York City from 1942 to 1948, and Professor at the University of Washington from 1948 to 1979. My field of expertise is American politics and political parties.

2. I received my Bachelor of Arts degree in Social Sciences from North Central College in 1931, my Master of Arts degree in Political Science from the University of Wisconsin in 1935, and my Ph.D. in Political Science from Northwestern University in 1937.

3. I was a member of the Executive Council of the American Political Science Association from 1950 to 1952, President of the Pacific Northwest Political Science Association from 1959 to 1960, and President of the Western Political Science Association from 1961 to 1962.

4. I have published numerous books on the subjects of political parties and Washington state politics, including POLITICS AND VOTERS (5th ed. 1981); AMERICAN GOVERNMENT: DEMOCRACY AND LIBERTY IN BALANCE (1976) (co-author with R. Silva, E. Keynes, and D. Adamany); POLITICS OF THE AMERICAN WEST (1970); and WASHINGTON POLITICS (1960) (co-author with D Ogden). I have also authored many articles in this field, the articles appearing in such periodicals as American Political Science Review, National Municipal Review, Law and Contemporary Problems, and Western Political Quarterly.

5. A true and correct copy of my *Curriculum Vitae* is appended hereto as Exhibit A.

6. The official political party organizations in King County, Washington, have endorsed and do endorse candidates in primary elections.

7. These and other party endorsements are vital political tools. They inform the voters that those most active in and involved with the party find a particular candidate's positions compatible with those generally held by party members. Moreover, taking away the ability to endorse or support candidates would weaken Washington political parties. Without endorsement powers, for example, the parties would find it difficult to hold elected officials accountable for their acts in office. Nor would they be able effectively to develop and advance political programs and governmental policies.

8. It is very important for the parties to control their own internal affairs. Frequently, the state is unable to anticipate or provide for a party's particular needs. In Washington, for example, state law had provided that the State Central Committees should be composed of one man and woman from each county in the state. This structure was unsuitable for the parties because it gave King County, the most populous in Washington, the same representation as the most sparsely populated county in the state. Because of a Washington Supreme Court decision, however, the parties are now free to establish their official party structure according to proportional representation, so that their members are more fairly represented in the party's central policy-making body.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Seattle, Washington, this 27th day of February, 1984.

/s/ Professor Hugh Bone
PROFESSOR HUGH BONE

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
JAMES MacGREGOR BURNS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, JAMES MacGREGOR BURNS, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a Professor of Political Science at Williams College. I have taught at Williams College since 1941, and became a Professor in 1953. My primary field of expertise is American party politics.

2. I received my Bachelor of Arts degree in Liberal Arts from Williams College in 1939. I received both my Master of Arts degree and Ph.D. in Government from Harvard University in 1947. I also completed a course of

postgraduate studies at the London School of Economics in 1949.

3. I served as President of the American Political Science Association from 1975 to 1976, and as President of the New England Political Science Association from 1960 to 1961.

4. I have written a number of books about political parties and the political process in America, including VINEYARD OF LIBERTY (1982); LEADERSHIP (1978); EDWARD KENNEDY AND THE CAMELOT LEGACY (1976); UNCOMMON SENSE (1972); ROOSEVELT: THE SOLDIER OF FREEDOM (1970); PRESIDENTIAL GOVERNMENT: THE CRUCIBLE OF LEADERSHIP (1966); THE DEADLOCK OF DEMOCRACY: FOUR-PARTY POLITICS IN AMERICA (1963); ROOSEVELT: THE LION AND THE FOX (1956); and CONGRESS ON TRIAL (1940). I am also the author (with Jack W. Peltason and Thomas E. Cronin) of an American government text widely used since 1951, GOVERNMENT BY THE PEOPLE. In addition, I have published numerous articles and reviews in *Harpers, The Atlantic, Life, Newsweek, The New York Times Magazine* and its *Book Review*, among others. In 1971, I won the Pulitzer Prize in History and the National Book Award.

5. I have been active in the Massachusetts Democratic Party since 1936. I was the Democratic nominee for Congress, 1st Congressional District of Massachusetts, in 1958. In 1952, 1956, 1960, and 1964, I was a Massachusetts delegate to the Democratic National Convention. I also served as a delegate to the National Charter Commission

of the Democratic Party in 1974 and to the Charter Commission of the Massachusetts Democratic Party from 1977 to 1979.

6. For many years the American constitutional system and our political party system operated in a creative balance that brought together the dynamism of popular participation and the constraints of the constitutional system. The grave weakening of the political parties has threatened to end this balance, and create in its stead a highly personalistic system that caters to irresponsible political campaigning and public service. Without the coordinating and unifying role of political parties, our system will tend to degenerate into a jumble of self-seeking candidates and powerful groups, which, combined with the power of the media, will lead to irresponsible, ineffective, and expensive government in the years to come.

7. Historically, parties were the great incubators of democracy, providing a place where citizens would gather to discuss the important issues of the day and to select candidates for office. There is a great need for parties to serve that same function today. The majority of people in this country still need a meeting place of democracy, a place where persons from all walks of life can seek common counsel. Parties are one of the few organizations that can serve this need and provide a link between the individual citizen and the government.

8. In Massachusetts, parties are regulated much less severely than they are in California. They are, for example, allowed to endorse candidates running in primaries. The parties are, therefore, better able to serve as the citizens' gathering place. Party caucuses are regularly held throughout the state. In these caucuses, neighbors

meet in small groups to discuss the questions facing the party. The party becomes, in essence, a civic enterprise. On a statewide level, up to several hundred thousand people will participate in these caucuses.

9. Parties also serve the very important function of recruiting capable candidates for public office. No other body has the breadth, scope, or ability consistently to find and persuade qualified individuals to run for the thousands of offices up for election each year. This activity is particularly important in regard to local posts, which frequently serve as entry level positions for persons destined for higher office.

10. Party endorsements in nonpartisan and primary elections serve other vital functions. They educate the public by informing them that the endorsed candidate believes in the program and shares the goals of the political party. In a slightly different sense, endorsements are a very useful guide to voters. When it endorses a candidate, a political party indicates to the members of that party that a group of like-minded people has carefully considered the candidate and found him or her acceptable. This function is especially crucial in the many instances where the voter cannot know enough about candidates to make an informed, independent judgment. The party endorsement, issued by individuals whom the voter trusts and with whom the voter shares political beliefs, is thus one of the surest and quickest guides available to the public.

11. Party endorsements are also important in giving parties some influence in the selection of the candidates who will be the eventual nominees of their party. They provide a means of holding their leaders accountable to the party program and ultimately to the citizens whom they represent.

12. The collective endorsements of the political party organizations are far more dependable and valuable to the voter than the endorsements of individual party leaders. An individual endorsement may be biased or reflect a view not consistent with that of the majority of the party. A collective endorsement, on the other hand, will more likely reflect the majority view of the party membership, and will thus serve as a more valuable guide to the voter.

13. Prohibiting a political party from endorsing in primary and nonpartisan races greatly weakens a party. Deprived of the ability to participate in these crucial elections, the party will have lost much of its reason for existing. Potential members will see little purpose in joining an organization that cannot effect their political beliefs. In short, taking away the endorsement power strikes at the very core of the party. So weakened, the political parties are unable to carry out the vital functions enumerated above.

14. Parties should have the ability to regulate their own internal organization. Without the freedom to organize themselves according to their needs, they are hampered in serving the important functions that parties must serve, including acting as the meeting place of democracy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Williamstown, Massachusetts, this 27th day of February, 1984.

/s/ James MacGregor Burns
PROFESSOR JAMES MacGREGOR BURNS

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
EDMOND COSTANTINI IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, EDMOND COSTANTINI, declare as follows:

1. I am a member of both the State Central Committee of the Democratic Party of California and of that body's Executive Board. I have been a member of both organizations since 1978. I also serve as chair of the California Credentials Committee. I have been an active member of the Democratic Party since 1960.

2. As chair of the Credentials Committee, I preside over meetings held to consider whether individuals should

be credentialed as members of the State Central Committee. In 1980, the credentials of Tom Metzger were challenged, placing the matter before our Committee. Tom Metzger had been a Democratic nominee for Congress from the San Diego area, but had been defeated by Representative Clair Burgener, a Republican. Mr. Metzger received the nomination even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorred by the Democratic Party and its members. Because of the provisions of the Elections Code, the Democratic Party could not promote the candidacy of a more representative Democrat or argue to the electorate that Mr. Metzger's program and ideas should be rejected. The Credentials Committee did not credential Mr. Metzger, a position affirmed by the whole State Central Committee.

3. I recently learned that in the spring of 1983 Assemblyman Richard Floyd introduced a bill into the Assembly, A.B. 1977, that would have changed the method of selecting the members of the Democratic State Central Committee, forcing the Party to revert in large part to the system that had existed before 1979. A true and correct copy of that bill as it was originally proposed is appended hereto as Exhibit A. The State Party had long deliberated over the matter of internal reform—a process in which I was intimately involved—and, after the conclusion of those deliberations, had succeeded with considerable difficulty in persuading the legislature to abandon the pre-1979 structure. The Party advocated reform because the old system did not provide for the fair representation of County Central Committees or grass roots activists on the State Central Committee. In short, it did not meet the needs of the

party. It was therefore distressing to learn that this bill, A.B. 1977, had been introduced into the legislature without consultation with the Party and, as far as I know, without the knowledge of the official Party leadership. The Party has avoided being injured by this misconceived bill because of legislative amendments that have struck these offending provisions.

4. The danger of allowing the Legislature to have such extensive control over a political party's structure is well illustrated by this example. Only the party can best judge its needs and thus best structure its organization. As long as the legislature has the power to change the rules governing the internal affairs of a political party at will, the health and welfare of that party is in constant jeopardy.

5. Late in 1983, I learned that the California Fair Political Practices Commission had directed its staff to prepare a report on slate mailings in the 1982 primary campaigns. I contacted a member of the staff to request a copy of that report, which that person later gave me. It identifies a number of problems associated with slate mailings which affect the health and well-being of our political system. I agree with the report's conclusion on page 55 that these problems could be ameliorated by allowing "party endorsements in primary campaigns so as to offset the 'growing power' of slate mailings." I have appended hereto as Exhibit B a true and correct copy of this report.

6. Also appended hereto, as Exhibit C, is a true and correct copy of a slate mailer distributed by Willard Murray in the Los Angeles area in June 1982.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at ————, California, this —— day of February, 1984.

/s/ Edmond Costantini
PROFESSOR EDMOND COSTANTINI

SUPREME COURT OF THE UNITED STATES

No. 87-1269

March Fong Eu, Secretary of State
of California, et al.,
Appellants

v.

San Francisco County Democratic
Central Committee, et al.

APPEAL from the United States Court of Appeals for the Ninth Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

The Chief Justice took no part in the consideration or decision of this order.

April 18, 1988